

1 UNITED STATES DEPARTMENT OF AGRICULTURE
2 BEFORE THE SECRETARY OF AGRICULTURE

3 IN re: Docket #AO-F&V-991-A3; FV03-991-01
4 HOPS PRODUCERS FOR WASHINGTON, OREGON, IDAHO AND
5 CALIFORNIA
6

7 Hearing held on the 23rd day of October 2003

8 at 8:32 a.m.

9 Doubletree Hotel Yakima Valley

10 1507 North 1st Street

11 Yakima, WA 98901

12 TRANSCRIPT OF PROCEEDINGS
13
14

15 BEFORE: HONORABLE JILL S. CLIFTON
16
17

18 APPEARANCES:
19

20 BRENDAN MONAHAN, STEPHEN CARPENTER, LESLIE ROY, THOMAS
21 GASSELING, KEN DESSERAULT, AND REGGIE BRULOTTE
22 For the Proponents
23

24 MATTHEW CARSWELL, JIM MOODY, LUTHER TWEETEN, AND MARK
25 JEKANOWSKI
26 For the Opponents
27

28 SHARLENE DESKINS, ANNE DEC, KATHLEEN FINN, DONALD
29 HINMAN, BARRY BROADBENT, AND GARY OLSON
30 For the USDA

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P R O C E E D I N G S

October 23, 2003

ADMINISTRATIVE LAW JUDGE: We are back on record at 8:32. This is day seven of our Hops Rulemaking Hearing. It is Thursday, October 23, 2003. It is approximately 8:32 -- I think I said that already. We went late last night, and I just want everyone to extend their appreciation to our Court reporter, who works harder than any of us here, and when we finish at 8:30, he is not done yet. So Kearney, we all thank you. Mr. Monahan, are you ready to call your next witness?

MR. MONAHAN: Yes, Your Honor. Proponents call Tom Gasseling, as soon as Mr. Roy gets his act in order.

ADMINISTRATIVE LAW JUDGE: Oh, audiovisual presentation?

MR. MONAHAN: Yes, ma'am.

ADMINISTRATIVE LAW JUDGE: That is good. Mr. Gasseling, would you again state and spell your full name for the record?

MR. GASSELING: My name is Thomas W. Gasseling, T-h-o-m-a-s, W., Gasseling, G-a-s-s-e-l-i-n-g.

ADMINISTRATIVE LAW JUDGE: Thank you. You
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1 remain sworn, and if you will please make yourself
2 comfortable there, you may want to pour some water.

3 MR. GASSELING: Okay. Does that mean you
4 think I am going to be here for a while?

5 ADMINISTRATIVE LAW JUDGE: I do, not only
6 because of the subject matter you are covering, but
7 also, because of your expertise in the issues involved.
8 Mr. Monahan, you may proceed.

9 MR. MONAHAN: Thank you, Your Honor. Before
10 we get into the substance of the provisions in the
11 proposed order, and before I talk to Mr. Gasseling about
12 his background as a farmer, we do have one follow-up
13 matter, and that is the amended definition of handle. I
14 have handed to the witness and to Your Honor a document
15 that we would ask be marked as the next sequentially
16 numbered exhibit.

17 ADMINISTRATIVE LAW JUDGE: Thank you. Let us
18 go off record just a moment.

19 ***

20 [Off the record]

21 [On the record]

22 ***

23 ADMINISTRATIVE LAW JUDGE: Next exhibit number
24 is 43 so I am marking this document, which is entitled,
25 991.08 Handle, as Exhibit #43.

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1 MR. MONAHAN: Thank you, Your Honor.

2 ***

3 THOMAS W. GASSELING,
4 having previously been duly sworn, according to the law,
5 testified as follows:

6 BY MR. MONAHAN:

7 Q. And I would ask Mr. Gasseling, sir, when
8 we presented -- when the Proponents Committee presented
9 testimony in Portland, there were some questions
10 regarding the first effort at defining the term "handle"
11 that resulted in some refinements from the Proponents
12 Committee's definitions. Is that a fair statement?

13 A. Yes.

14 Q. Can you please describe for those of us
15 here how the Proponents Committee has changed the term
16 "handle" and it is now intended to -- refer to it is now
17 intended to accomplish?

18 ***

19 ADMINISTRATIVE LAW JUDGE: Let us go off
20 record just a moment.

21 ***

22 [Off the record]

23 [On the record]

24 ***

25 ADMINISTRATIVE LAW JUDGE: We are back on

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1 record at 8:37. Thank you, Mr. Monahan.

2 MR. GASSELING: Do you want me to read the new
3 definition or just explain what this revision is
4 intended to portray?

5 ***

6 BY MR. MONAHAN:

7 Q. It is short enough, why don't you go
8 ahead and read it and then describe what it is intended
9 to accomplish?

10 A. 991.08 Handle: Handle means to prepare a
11 raw hops for market, acquire raw hops from a producer,
12 or sell hops to an end user or foreign purchaser,
13 provided, however, the transfer of raw hops to another
14 producer for deficiencies pursuant to 7 C.F.R. Section
15 991.56(a) shall not be considered handling. (1) Raw
16 hops means hops in loose packaged or bale form that have
17 not been prepared for market. (2) Prepare raw hops for
18 market means to pelletize raw hops or to extract alpha
19 acids from raw hops. (3) Acquire raw hops means to
20 purchase raw hops from a producer or accept raw hops
21 from a producer on a consignment contract. (4) End user
22 means a brewer or other person who utilizes hops. (5)
23 Foreign purchaser means any person who purchases hops
24 directly from a producer and who does not maintain
25 business offices and licenses in the United States of

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1 America.

2 ***

3 ADMINISTRATIVE LAW JUDGE: That was actually
4 "or licenses". Is that correct?

5 MR. GASSELING: Yes. Excuse me.

6 ***

7 BY MR. MONAHAN:

8 Q. Thank you, Mr. Gasseling. Could you
9 describe in general terms sort of the universe of
10 persons who would fit the definition of handler?

11 A. Well, I think it would be shorter to
12 define who would remain a producer, from my point of
13 view. This is meant to explain that you would remain a
14 producer if you physically move the hops to a storage
15 location, different storage location, but you remain in
16 control, you would be a producer. If you transfer those
17 hops to another producer to fill deficiencies, you are
18 still considered a producer. If you deliver those hops
19 to a handler, as a producer, you are still a producer.
20 So there are three instances you are a producer; in
21 every other instance, you would considered a handler.

22 Q. If a producer sells directly to a brewer,
23 who is the handler?

24 A. The producer.

25 Q. If a producer sells to a dealer, handler,

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1 brewer overseas, who is the handler?

2 A. The producer becomes the handler.

3 Q. If a producer sells or consigns hops to
4 one of these outlets that we heard about yesterday --
5 John I. Haas, S. S. Steiner, Yakima Chief -- who is the
6 handler?

7 A. S. S. Steiner, Yakima Chief, John I.
8 Haas, Hop Union.

9 ***

10 MR. MONAHAN: Your Honor, I have no further
11 questions on 991.08 Handle. I would defer to Your
12 Honor's judgment as to whether we should do piecemeal
13 cross examination or go through all of the materials
14 with Mr. Gasseling today.

15 ADMINISTRATIVE LAW JUDGE: I would like to do
16 piecemeal cross examination and invite anyone who has
17 questions of Mr. Gasseling on this issue to bring them
18 up at this time. Let me see -- let me start with those
19 who are in a position for the marketing order. There
20 are none. Those who are in a position against the
21 marketing
22 order -- Mr. Carswell?

23 MR. CARSWELL: Thank you, Your Honor.

24 ***

25 BY MR. CARSWELL:

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1 Q. Mr. Gasseling, you just answered Brendan
2 that if hops were transferred to a John I. Haas or a
3 Steiner on consignment, that the producer would be
4 treated as a handler.

5 A. No, I didn't say that.

6 ***

7 ADMINISTRATIVE LAW JUDGE: The opposite, I
8 believe.

9 MR. GASSELING: I said the opposite.

10 ***

11 BY MR. CARSWELL:

12 Q. Oh. You said that...

13 A. If John I. Haas or S. S. Steiner
14 purchased the hops, they are the handler. If the hops
15 are delivered on a consignment basis, let us say the
16 Yakima Chief, Hop Union, they are the handler.

17 Q. Okay. So when they accept the hops, they
18 are not going to be treated as -- they are going to be
19 treated as a handler, but the producer is not the
20 handler in that situation?

21 A. Yes.

22 Q. Okay. Sorry. So in the situation where
23 Yakima Chief would acquire raw hops on consignment,
24 would Yakima Chief be treated as a handler?

25 A. Yes.

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1 ***

2 MR. CARSWELL: Okay. Thank you.

3 ADMINISTRATIVE LAW JUDGE: Are there other
4 questions on the definition of handle and anything else
5 on Exhibit #43? Mr. Moody.

6 MR. MOODY: Thank you, Your Honor.

7 ***

8 BY MR. MOODY:

9 Q. Mr. Gasseling, is there any difference
10 between a producer, the situation where a producer
11 delivers hops under a contract to Steiner, has paid for
12 them upon delivery, and a producer who delivers hops to
13 Yakima Chief and is paid for them at the closing of the
14 pool -- is there any difference in the definition of
15 handler in those two situations?

16 A. No.

17 Q. So in both cases, Steiner and Yakima
18 Chief would be the handler?

19 A. Yes.

20 Q. And when would the moment of handling
21 be -- when they are actually physically transferred to
22 Steiner and Yakima Chief?

23 A. When they were transferred and accepted.

24 Q. Okay. Now, I am a little confused on
25 this prepare raw hops for market. If I understand it

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1 correctly, sometimes the hops can be marketed in bales.
2 Is that correct?

3 A. That is correct.

4 Q. Okay. So you carved out a little niche
5 here for preparing hops for market means to pelletize
6 raw hops or to extract alpha acid. So that means if a
7 producer does either of those two things, it becomes a
8 handler?

9 A. Yes.

10 Q. At the time when they are prepared for
11 market?

12 A. Yes.

13 Q. But if he just stacks up some bales in
14 his warehouse, he is not yet a handler?

15 A. Yes.

16 ***

17 MR. MOODY: Thank you. That is it for now.

18 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
19 Moody. Other questions from those who are in a position
20 against the marketing order? There are none. I would
21 invite questions now from neutral representatives. I
22 will start with the USDA. Yes, Ms. Finn.

23 MS. FINN: Thank you.

24 ***

25 BY MS. FINN:

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1 Q. Is this intended to be a total
2 replacement for 991.08?

3 A. For the definition of handle, yes.

4 Q. Including these definitions, so we
5 totally delete what was in the notice under 991.08 and
6 replace it with this information?

7 ***

8 MR. MONAHAN: It is a direct substitute.

9 MR. GASSELING: Thank you, Mr. Monahan.

10 ***

11 BY MS. FINN:

12 Q. So what is taken out of there is
13 something about moving the hops out of the production
14 area. You don't want that part of being a definition of
15 handle. Is that correct?

16 A. Well, this was intended to simplify the
17 whole definition. And as I said in the beginning,
18 basically, what it does is if I am a producer and I load
19 my hops on a truck and haul them from Wapato to
20 Toppenish, or Yakima, or to Oregon, or to Timbuktu for
21 storage, they are not handled. And if I take those hops
22 and fill deficiencies with another grower, so I load
23 them on my truck and I take them to that grower's
24 location, I am not a handler. If I deliver hops to a
25 handler as defined here, which would be somebody like

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1 John I. Haas, S. S. Steiner, or Yakima Chief, or Hop
2 Union, I load my bales, I take them to their warehouse,
3 I am not a handler. In all other instances, I am the
4 handler. And I might add that I have heard that there
5 is this big fear of being a handler. I think in the
6 State of Washington, anybody who sells directly to an
7 end user in Washington law is a handler. So we are
8 already handlers under the law in some instances, so I
9 don't think that is as big of an issue as a lot of
10 people have made it out to be as far as this big, scary
11 bogeyman type thing that some people have portrayed it
12 to be.

13 Q. And just one last question for my own
14 clarification, when hops are harvested and dried and
15 baled, they are still considered raw hops?

16 A. Yes.

17 ***

18 MS. FINN: Thank you.

19 ADMINISTRATIVE LAW JUDGE: Mr. Olson or Mr.
20 Broadbent, whoever wants to go first? Mr. Olson.

21 ***

22 BY MR. OLSON:

23 Q. Following up on the language that was
24 taken out of the previous definition of handle, which
25 talks in terms of transporting or shipping hops out of

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1 the production area, when would a grower who ships
2 product out of the production area to a storage facility
3 in St. Louis -- at what point would those hops be
4 handled?

5 A. Under your supposition, you are stating
6 that they are just being shipped to be stored?

7 Q. In loose form.

8 A. In loose form. As long as they would
9 remain there just as a storage situation, they wouldn't
10 be handled. If that place where they are being stored,
11 whoever is storing them, would then actually take
12 possession of those and under these terms handle,
13 prepare for market, or take title, they would be
14 handled.

15 Q. Well, what if a producer shipped loose
16 hops to a facility in Canada -- who would be the handler
17 in that scenario?

18 A. Well, if you ship them to a foreign
19 destination, then you would become the handler.

20 Q. Are you suggesting under this definition
21 that when loose hops are shipped out of the production
22 area to facilities within the United States, that the
23 order would have authority to regulate handlers outside
24 the production area?

25 A. Could you repeat that, please?

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1 Q. In the first scenario, when we talked
2 about loose hops being shipped out of the production
3 area for storage, are you suggesting in that scenario,
4 when the hops have not yet been handled under your
5 definition, that the order has authority to regulate
6 handlers outside the production area?

7 A. If their physical location is not in the
8 production area? I don't quite understand.

9 Q. Well, there are a number of different
10 scenarios one could put forth, but if we assume for this
11 hypothesis that we have a handler who has no facilities
12 nor business operations within the production area;
13 further, we assume that a grower has shipped loose hops
14 out of the production area for storage, you know, so
15 those hops are outside of the regulated area, and those
16 hops are ultimately sold to -- I don't want to use the
17 term "handler" at that point -- that user, in that
18 scenario, when did handle occur, who is the handler, and
19 are you suggesting that the order has authority to
20 regulate that user outside of the production area?

21 A. So if I understand you correctly, if I
22 shipped hops to Montana for storage, and there was a
23 dealer or handler who operated but their office was in
24 Montana, where would the handling occur if, in fact,
25 that operation purchased those hops -- is that the

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1 question?

2 Q. Yes, or at least one of a line of issues.

3 A. Well, it would be my feeling that
4 shipping the hops for storage in Montana is not
5 handling. If I sold those hops under the definition of
6 a handler whose office was in Montana, they would be the
7 handler.

8 Q. If from a regulatory standpoint the order
9 does not have authority to regulate businesses outside
10 of the production area, would it be reasonable to apply
11 the application of the definition of handle to also
12 include loose bales that leave the area of production at
13 the time they leave the area of production?

14 A. I guess I would say that if that, in
15 fact, is the law, then it would have to state that. We
16 have no authority to regulate outside of the production
17 area a handler, then it would have to be put in.

18 Q. Then under that scenario, you would
19 suggest that the language in the old definition of
20 handle under (b) which says the sale, transportation --
21 excuse me, that is the wrong one. Actually, I think the
22 language would be in the first paragraph, which refers
23 to that language. It says transport or ship in grounds
24 except as common or contract carrier of hops owned by
25 another or otherwise place hops into the current of

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1 commerce within the production area or from the areas to
2 points outside thereof, be included?

3 A. Well, I think if that is actually the
4 case, then it would have to be included.

5 ***

6 MR. OLSON: Thank you.

7 ADMINISTRATIVE LAW JUDGE: But let me make
8 sure I understand. Why would the phrase "within the
9 production area" have to be included under your
10 scenario, Mr. Olson?

11 MR. OLSON: It would not, Your Honor. I read
12 that as part of the -- being a slow reader, haven't
13 gotten my eyes quite going yet this morning. But that
14 particular couple words would not have to be included.
15 The important words were the transport or ship except as
16 common or contract carrier of hops owned by another or
17 otherwise place hops into the current of commerce.

18 ADMINISTRATIVE LAW JUDGE: And then what would
19 follow that?

20 MR. OLSON: Or from the area to points outside
21 thereof.

22 ADMINISTRATIVE LAW JUDGE: Or...

23 MR. OLSON: Well, I guess the question would
24 be whether one ships products outside of the production
25 area, whether that is entering the current of commerce.

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1 The first point would be that when it enters into the
2 current of commerce and the second point would be when
3 it is shipped from the production area outside.

4 ADMINISTRATIVE LAW JUDGE: You raise an
5 important point, and I think it would be wise for us to
6 allow the Proponents Committee to caucus and work on
7 that part of the old language that isn't in the new to
8 see just what they believe would be the most effective.
9 Is it a given within your understanding, Mr. Olson, that
10 only handlers who operate within the production area can
11 be regulated by this marketing order?

12 MR. OLSON: Well, I haven't yet been sworn in.
13 That is my understanding, Your Honor.

14 ADMINISTRATIVE LAW JUDGE: All right. Will
15 you be testifying at some point?

16 MR. OLSON: I had not planned to.

17 ADMINISTRATIVE LAW JUDGE: All right. Then
18 let me swear you in with regard to your understanding of
19 that point. Please raise your right hand.

20 ***

21 [Witness sworn]

22 ***

23 GARY D. OLSON,
24 having first been duly sworn, according to the law,
25 testified as follows:

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1 BY ADMINISTRATIVE LAW JUDGE:

2 Q. Would you state your full name?

3 A. My name is Gary D. Olson. I spell my
4 name G-a-r-y, D., O-l-s-o-n. Earlier in this
5 proceeding, I gave my title and address.

6 Q. All right. Thank you. Have you been
7 involved in administering other marketing orders?

8 A. Yes, I have.

9 Q. All right. And tell me what your
10 understanding is with regard to the reach of the
11 regulations and whether they can affect only those
12 entities that are doing business within the production
13 area.

14 A. My understanding in the marketing orders
15 we work with is that the programs have authority to
16 regulate those entities operating within the production
17 area. And further, that in other programs the
18 definition of handle for a product that hasn't been --
19 the definitions of handle can vary, but universally,
20 when the product leaves the production area, it is
21 considered handled.

22 ***

23 ADMINISTRATIVE LAW JUDGE: Thank you. Let us
24 take a 15-minute break at this moment, and that will
25 give everyone in the room an opportunity to consider

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1 this. The Proponents Committee may have a suggestion to
2 make and so might others who are here.

3 MR. MONAHAN: Don't we get to cross examine
4 Mr. Olson?

5 ADMINISTRATIVE LAW JUDGE: You would have that
6 right. Would you like to do that now or after you
7 caucus?

8 MR. MONAHAN: No. I was just teasing.

9 ADMINISTRATIVE LAW JUDGE: All right. Thank
10 you. Then please be back and ready to go at 9:15.

11 ***

12 [Off the record]

13 [On the record]

14 ***

15 ADMINISTRATIVE LAW JUDGE: We are back on.
16 Yes, Mr. Monahan.

17 MR. MONAHAN: Thank you. During the break,
18 the Proponents Committee was able to caucus. We were
19 actually able to patch in Mr. Christiansen on the phone.
20 We have taken the language regarding transportation to
21 points outside of the production area from the previous
22 effort at 991.08 and inserted it into the definition of
23 handle. We don't have a redline copy up on the screen.
24 The numbered paragraphs 1 through 5 remain the same.
25 None of the verbiage from this morning was deleted. We

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1 have added the following language: Or transport or
2 otherwise place hops in the current of commerce within
3 the production area to points outside thereof. And we
4 would submit that as an amendment, our second amendment,
5 to Section 991.08. I believe, Your Honor, if there are
6 no further revisions, which we will probably learn
7 momentarily, we would be able to print this into hard
8 copy and distribute it later this morning or at least by
9 the noon hour.

10 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
11 Monahan. We were in the process of entertaining
12 questions from representatives from USDA, and I will
13 stay there for now. Mr. Olson, do you have any
14 additional questions or would you like Mr. Gasseling to
15 walk through the intent with some real life scenarios?

16 MR. OLSON: Well, Your Honor, if Mr. Gasseling
17 is willing to do that in a quick and speedy manner, we
18 can spend a lot of time on this definition of handle
19 using examples.

20 ***

21 THOMAS W. GASSELING,
22 having previously been duly sworn, according to the law,
23 testified as follows:

24 BY MR. OLSON:

25 Q. But Mr. Gasseling, in the situations that
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1 we were talking previously, where a grower ships loose
2 hops outside of the production area to a facility in
3 Montana, who would be the handler and when would be the
4 point of handling?

5 A. As we redefine this, once they shipped
6 them out of the growing area, that individual would
7 become the handler. So the grower shipping them out
8 would become the handler.

9 Q. Now, there was a situation where I guess
10 a grower shipped loose hops to a -- let us assume there
11 is a regulated handler within the production area who
12 has storage facilities just outside the production area.
13 In that situation, when the grower is shipping product
14 to a regulated handler, but the handler has requested
15 that the product be delivered to a location outside the
16 production area, who would be the handler in that
17 scenario?

18 A. The producer is shipping to a regulated
19 handler in the production area?

20 Q. Shipping to a regulated handler who has a
21 storage facility just outside the production area.

22 ***

23 MR. MONAHAN: Just for clarification, is the
24 shipment part of a sale or consignment or just for
25 storage?

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1 MR. OLSON: I guess either one of those
2 scenarios would be worth exploring.

3 MR. GASSELING: Well, if it were -- as I would
4 understand it, if it were for sale or consignment, the
5 handler would -- the one receiving would be the handler.
6 If it was just for storage, the producer would become
7 the handler if it were shipped outside of the growing
8 area.

9 ***

10 BY MR. OLSON:

11 Q. So in that scenario, if the handler, a
12 regulated handler, using the term, you know, according
13 to your definition within the production area, in
14 acquiring the hops asked that grower to ship those loose
15 hops to a storage facility outside of the area of
16 production, the regulated handler would be the one who
17 handled in that scenario?

18 A. Yes.

19 ***

20 MR. OLSON: Thank you, Mr. Gasseling. I have
21 no further scenarios.

22 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
23 Olson. Are there other questions at this point from
24 USDA? Not at this point. Mr. Moody?

25 MR. MOODY: Thank you, Your Honor.

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1 ***

2 BY MR. MOODY:

3 Q. If I could ask you, Mr. Gasseling, to
4 look for a moment at 991.52(b)? That section says when
5 an allotment percentage is established for any marketing
6 year, no handler shall purchase from producers any alpha
7 acid during such year unless, basically, it is part...

8 A. Which one is it again?

9 Q. ...of the producer's allotment. 51(b).

10 A. Okay. Go ahead.

11 Q. Pardon me -- 52(b).

12 A. Okay.

13 Q. Getting back to the case I asked you
14 before, when producers consign their hops to Yakima
15 Chief, and you told me the movement of the hops from the
16 producer to Yakima Chief would trigger the handling of
17 them, I am a little confused here now because the word
18 "purchase" is in 52(b). It seems the word "purchase"
19 here triggers the act of handling. I wonder if you
20 could explain that for me?

21 ***

22 MR. MONAHAN: Your Honor, I can probably
23 interject. I think that the revision of the definition
24 of handle is going to require that term "purchase" to be
25 "acquire". That way we will be in line with the

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1 definition of handle, when a handler acquires from
2 producers.

3 MR. MOODY: Okay. I think you would then be
4 left only with a problem of producer direct handlers,
5 because the producer becomes the handler without ever,
6 technically speaking, acquiring the hops from anybody.
7 So in other words, when a producer sells their hops
8 direct to Coors, that is a handling transaction, but a
9 handler didn't really purchase or acquire anything, and
10 I just think it is closer, Brendan, but I think you need
11 to deal with that "producer direct from"

12 MR. MONAHAN: In other words, Mr. Moody --
13 thank you for the point -- it appears that when the
14 handler -- excuse me -- when the growers prepares hops
15 for market, that is going to be another scenario that we
16 would have to address in 991.52.

17 ADMINISTRATIVE LAW JUDGE: Yes. And Mr. Moody
18 has drawn attention to subsection (b) but we noted
19 previously that that word "purchase" is also in
20 subsection (a). So it does need a replacement term or
21 phrase. All right. We will remember to revisit that.
22 Thank you, Mr. Moody. Mr. Moody, other questions on the
23 proposed revision? No. Mr. Carswell.

24 MR. CARSWELL: Yes.

25 ***

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1 BY MR. CARSWELL:

2 Q. Can I call you Tom?

3 A. No.

4 Q. Okay. Mr. Gasseling.

5 A. Yes, you can.

6 Q. It is going to be a long day. Tom, if we
7 could go back to 991.08, I just want to clarify
8 something because there may be an issue, maybe not.
9 What I understand is there has kind of been a
10 development of maybe a somewhat new situation where you
11 have the dealers or handlers, such as Steiner, acting
12 more in a service capacity with growers, where the
13 growers are selling direct, but Steiner, or Haas, or
14 whomever, may be processing the hops, and so you have a
15 direct relationship between the growers and, say, a
16 brewer, and yet, you have the processing of the hops by
17 Steiner. And under this definition of handle, I can
18 imagine that they both would be treated, both Steiner
19 and the grower would be treated as a handler. And I am
20 just wondering if that is envisioned, and that is
21 expected, and they both will be the handler, or if there
22 maybe needs to be some clarification under those
23 scenarios.

24 A. It would be my understanding that in that
25 situation, if the grower sold directly to the brewery,

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1 the grower is the handler.

2 Q. Even though, you know, there would be a
3 party in that transaction preparing the hops for market
4 by pelletizing or extracting?

5 A. Well, my feeling would be that the chain
6 of events would be the grower delivers the hops to the
7 end user, the brewery, which makes the grower the
8 handler, and then the brewery designates what they want
9 to have happen with those hops, so that happens after
10 that original transaction, so that the grower would
11 still remain the handler, and the processing part or the
12 processor would come in after the transaction itself.

13 Q. Okay. So even though the hops would,
14 presumably, physically go to the Steiner operation, they
15 would be in care of the brewer -- the transaction would
16 be with the brewer and so the producer would be the
17 handler?

18 A. Yes. That is how I understand it would
19 work.

20 ***

21 MR. CARSWELL: Thank you.

22 ADMINISTRATIVE LAW JUDGE: Your question, Mr.
23 Carswell, raises an issue in my mind, too, and that is
24 that the definition in 991.08 does not appear to make
25 clear that once there has been a first handler, there is

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1 no subsequent handler subject to those obligations that
2 the first handler must comply with. I don't have any
3 suggestion for how that might be, but somewhere in the
4 definition it needs to be made clear that once the hops
5 have been handled, no successive handling is counted as
6 handling. Right. I have no help, but I know that is a
7 problem that needs to be clear. Mr. Olson.

8 ***

9 BY MR. OLSON:

10 Q. Mr. Gasseling...

11 A. You can call me Tom.

12 Q. Mr. Tom, would you interpret the
13 definition of handle in such a manner as that there can
14 actually be several situations of handling but that the
15 regulations within the order would typically only apply
16 to the first handling?

17 A. I think that is definitely the intent of
18 that.

19 Q. Are there situations, for example, in
20 reporting requirements, where it might be reasonable to
21 require reports from first and second handlers?

22 A. I would hope not. It should be the first
23 handler that has to be required to do the reporting.

24 Q. Should there be a need for, for example,
25 storage information -- can you envision situations where

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1 there might be a need to ask for information from
2 somebody who may be the "second handler" within the area
3 of production?

4 A. Could you give me an example where that
5 might be?

6 Q. Well, the one I was using was storage
7 reports would be an example where, perhaps, a grower has
8 triggered the definition of handle in some manner under
9 this definition, the product is sent to a storage
10 facility within the area of production, put into
11 inventory -- I am sure you can think of a lot of
12 different kinds of scenarios. Is it conceivable that
13 some of those scenarios, that it might be viable for the
14 industry to have information from a second handler?

15 A. Well, my opinion is that it might be, but
16 that information should be supplied by the first
17 handler. So the information is the same; it doesn't
18 change. If the first handler supplies the information
19 on the amount and so forth, and where it is stored, the
20 second -- the person storing it would just be -- as I
21 would see it, would just verify what is being reported
22 by the person storing the product.

23 Q. If they verify it, would that be
24 considered a reporting requirement?

25 A. Do you mean, would they have to verify

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1 it, the storage individual?

2 Q. Well, I think the broader question is
3 whether this proposed program should have authority to
4 require reports from someone other than the first
5 handler. So I am trying to flush through some of these
6 various scenarios to see if your testimony is such that
7 the border should allow authority for the order to ask
8 for, for example, reports from first, second, or third
9 handlers.

10 A. I don't think so. I think the way it is
11 perceived, if there is a question about the report or
12 what has been reported, the Committee has the authority
13 to check on the validity of that information, and that
14 would entail going to the other party where it is stored
15 to verify it. That is one thing, but I don't -- I think
16 it gets too complicated if you start asking for reports
17 from the second, and third, and fourth, and fifth, and
18 sixth -- I think it is the requirement of the first
19 handler. If that first handler erroneously gives
20 information, then they are subject to the penalties and
21 so forth.

22 ***

23 ADMINISTRATIVE LAW JUDGE: Yes. Let us change
24 the tape at 9:37.

25 ***

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1 [Off the record]

2 [On the record]

3 ***

4 ADMINISTRATIVE LAW JUDGE: Back on record at
5 9:37. Mr. Olson.

6 ***

7 MR. GASSELING: Could I maybe -- if I
8 understand you, the question might be that I sold a
9 product directly to a brewery, so I am the handler.
10 Then it is designated that that product go to some other
11 handler, as the example of Mr. Carswell, for processing
12 and storage. Are you asking then should the person that
13 is doing the processing and the storage also be required
14 to report?

15 ***

16 BY MR. OLSON:

17 Q. My guess is I was looking at it as a
18 general question. I wasn't orienting on the volume
19 control provisions, but I was thinking more in terms of
20 the kinds of marketing information that the Committee
21 might find valuable and whether in requesting
22 information or whatever that marketing information,
23 whether it is the amount of product in pellets, loose
24 form, extract, or whatever, whether the Committee would
25 want to ask second handlers to submit that kind of

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1 information to them.

2 A. Well, I think in the order, the Committee
3 has the power to request information that they deem
4 necessary and important in making their decisions on
5 setting the salable, and that may well be one of them is
6 stocks on hand, inventory, and so forth, so I would
7 envision that they would do what was necessary to get
8 that information.

9 Q. Including requesting reports from second
10 handlers, for example?

11 A. Well, if you couldn't get the proper
12 information, they may well ask that. But if it was
13 being stored or being -- see, I go back to Mr.
14 Carswell's -- the first handler would have the
15 information of what the product is and where it is at.
16 But it may well be that there could be a scenario
17 whereby there may be additional information requested or
18 required by the Committee.

19 ***

20 MR. OLSON: Thank you.

21 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
22 Olson. Mr. Carswell.

23 MR. CARSWELL: Thank you, Your Honor.

24 ***

25 BY MR. CARSWELL:

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1 Q. Tom, I believe that the goal here is not
2 to have end users be handlers. Is that correct?

3 A. Correct.

4 Q. I would just maybe suggest another
5 change, and that is, where it says handle means to
6 prepare raw hops for market, acquire raw hops from a
7 producer, or sell hops to an end user or foreign
8 purchaser, that acquire raw hops from a producer, if you
9 have a direct relationship as a brewer, that would seem
10 to make you a handler. And so I am wondering if we
11 could maybe even give you some language, maybe to put
12 acquire raw hops from a producer except when the
13 acquisition is by an end user. Because the
14 acquisition -- I presume you are not trying to make
15 brewers handlers, and so an acquisition by an end user
16 would not trigger the handle definition, I would think.

17 A. Correct.

18 Q. So maybe you could pop that language in
19 or language to that effect.

20 ***

21 MR. MONAHAN: That is something we would be
22 happy to consider.

23 MR. CARSWELL: Okay. And then under
24 paragraph -- under that point (2), you might just put in
25 some language -- and I haven't formulated the language,

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1 but if you don't mean that second handling to be
2 covered, if the determination is not to make them a
3 handler when the producer is a handler because of the
4 direct relationship, the direct sale to an end user, you
5 might put in some language to the effect of unless the
6 preparation is in the context of a direct sale by a
7 producer to an end user or foreign purchaser.

8 ***

9 MR. MONAHAN: The simpler you make it, the
10 more complicated it gets.

11 MR. CARSWELL: Sorry. I am trying to be
12 helpful.

13 MR. MONAHAN: We are happy to consider it.

14 ADMINISTRATIVE LAW JUDGE: Mr. Carswell, would
15 you read your proposals again so that we can copy them
16 down?

17 MR. CARSWELL: Yes, Your Honor. In the
18 definition of handle, the initial definition, where it
19 says acquire raw hops from a producer, I would suggest
20 language after producer there, except when the
21 acquisition is by an end user or foreign purchaser. And
22 I don't have the specific language for paragraph 2, but
23 the idea would be unless in the context of a direct sale
24 by a producer to -- excuse me -- unless the preparation
25 is in the context of a direct sale by a producer to an

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1 end user or foreign purchaser.

2 ADMINISTRATIVE LAW JUDGE: What comes after
3 direct sale?

4 MR. CARSWELL: Direct sale -- I am not sure
5 how I put it, but direct sale by a producer to an end
6 user or foreign purchaser.

7 ADMINISTRATIVE LAW JUDGE: Thank you.
8 Additional questions for Mr. Gasseling? All right.
9 Additional questions for Mr. Gasseling from anyone with
10 regard to the handle definition? Mr. Monahan.

11 MR. MONAHAN: Thank you, Your Honor.

12 ***

13 BY MR. MONAHAN:

14 Q. I would just like to follow up briefly on
15 the question that Mr. Olson asked regarding the type of
16 information that might be helpful to an administrative
17 committee in calculating demand for hops. Assume
18 that -- I am going to have to do a hypothetical for you,
19 Mr. Gasseling. I apologize. Assume that a grower
20 pelletizes his or her hops. Correct? And that
21 grower/producer has now handled those hops. Correct?

22 A. Yes.

23 Q. The pelletized hops are then sold to a
24 Steiner or a John I. Haas, which holds those hops and
25 speculates from the market. Are you with me so far?

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1 A. Yes.

2 Q. Would that dealer's inventory of hops,
3 even when it has not handled those hops, be important
4 information for the administrative committee to consider
5 when it is determining demand?

6 A. Yes, it would be.

7 Q. And do you envision and does the
8 Proponents Committee envision that the administrative
9 committee would have power and obligation to try to
10 ascertain that type of information?

11 A. Yes, it would.

12 ***

13 MR. MONAHAN: Thank you. That is all I have.

14 ADMINISTRATIVE LAW JUDGE: Mr. Gasseling, a
15 follow-up to that question. Do you envision that the
16 administrative committee would be able to obtain from
17 the brewers information about their stores or inventory?

18 MR. GASSELING: It would be nice to get that,
19 but I would envision that a major component that we
20 would need would be grower stocks, and dealer stocks,
21 and try to ascertain as much as possibly brewery stocks,
22 but I don't think that we would get those.

23 ADMINISTRATIVE LAW JUDGE: Thank you.

24 Additional questions for Mr. Gasseling?

25 MR. GASSELING: Your Honor, there is one thing

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1 about the gathering of the information that I would like
2 to just maybe clarify. This proprietary information
3 that the committee would gather would go to the
4 employees of the committee, and committee members as
5 such would not see the individual information. That
6 information would be compiled into totals and given to
7 the committee in totals. That is how it worked before,
8 that is how it works in the mint marketing order. So
9 the concern that growers have that an individual
10 committee man or woman, or the committee themselves,
11 could see individual grower information is -- if you
12 read that language in there, it is pretty specific that
13 that is not the way that it works.

14 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
15 Gasseling. That is very helpful.

16 ***

17 BY MR. MONAHAN:

18 Q. You bring up a good point, Mr. Gasseling,
19 and that is there has been some testimony or perhaps
20 suggestion through cross examination that individual
21 producers in today's day and age, in this unregulated
22 market, have access to the same type of information that
23 an administrative committee would have, and at least as
24 I have understood the suggestion through cross
25 examination, why and how would an administrative

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1 committee be better informed and have access to more
2 information than your average grower today. I would ask
3 you if you have an opinion on that issue as a grower.

4 A. This is my opinion from where I sit
5 today. To me, it has become very apparent that there
6 are certain factions of our industry that have access to
7 substantially more information than others. And
8 consequently, some of us are having to make decisions
9 without having that kind of information. And when I say
10 that, I mean there are things like inventories,
11 information with regards to what is going on in the
12 brewery side, the market. A lot of things that I take
13 and break the industry down between the growers, the
14 dealers, and then the -- you have the Yakima Chief
15 group, and so you just take the so called independent
16 grower and there is a faction out there that has not got
17 access to some very important information. So when we
18 have decided to sell, we sell at a real disadvantage.
19 And if nothing more helps, it would allow us who don't
20 have access to that, to get access to help make better
21 decisions.

22 Q. Thank you. Mr. Gasseling, tell us a
23 little about yourself. What type of farming operation
24 do you run, and describe how your family has been
25 involved in hops.

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1 A. I am a third generation hop farmer. I
2 have a little bit of French in me, but I am mostly
3 German and Dutch. And after I graduated from college, I
4 worked for one of the major dealers for 24 years.

5 Q. Which dealer was that?

6 A. John I. Haas.

7 Q. In what capacity did you work for John I.
8 Haas?

9 A. I started and ran their Idaho office for
10 a number of years and then moved to Yakima and took over
11 the office in Yakima, and also, continued to take care
12 of the Idaho people.

13 Q. Were you involved in the acquisition of
14 hops for John I. Haas?

15 A. Yes, I was.

16 Q. In what years?

17 A. I think 1971 through about 1989 or '90.

18 Q. Would it be fair then to say that you
19 have experience as a dealer or procurer of hops under
20 the old hop marketing order?

21 A. Yes, I did.

22 Q. There has been some discussion of how a
23 hop marketing order might affect the procurement
24 purchase contracting of hops under a subsequent hop
25 marketing order, under the proposed hop marketing order,

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1 and I would ask you to describe, sir, what your
2 experiences were in terms of contracting for hops and
3 acquiring hops from producers under the prior order.

4 A. Under the prior order, when I first
5 started purchasing hops, we knew where the salable was.
6 It was a little bit different situation under the
7 original order. There was a minimum for 75 percent. If
8 it went below that, the marketing order could be taken
9 out. But when we purchased from growers, we knew what
10 the current salable was, and we didn't purchase above
11 that. There was no provision in the other marketing
12 order as far as the increases during the season, and
13 that never was an issue. But we purchased based on that
14 salable, we purchased out into the future. Depending on
15 how things looked, we would purchase additional hops.
16 If there was a question about the possibility of those
17 hops being delivered, we purchased them on a TSA basis,
18 which was short for total salable allotment, which meant
19 that, normally, those contracts were written...

20 ***

21 ADMINISTRATIVE LAW JUDGE: Excuse me, Mr.
22 Gasseling. Mr. Moody, could you turn off the light that
23 is near you? Thanks. Okay. I am getting your
24 whispering up here, so it must not have been from that
25 if that was off. All right. Thank you. Go ahead, Mr.

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1 Gasseling.

2 MR. GASSELING: So anyway, we would -- if
3 there was a question of whether the salable would be
4 increased or decreased, we bought those contracts under,
5 as I said, TSA, which is total salable allotment, so the
6 contract actually read we would purchase cluster hops,
7 let us say, 40 pounds, estimated 40 pounds TSA, which
8 meant that if the salable were reduced, that amount
9 would be reduced. If the amount was -- if the salable
10 was increased, we would purchase the increased amount.
11 And we made contracts based on that up to seven years.

12 ***

13 BY MR. MONAHAN:

14 Q. In the 15 years that you operated as a
15 purchaser or a purchasing agent for hops under the prior
16 marketing order, are you aware of any instances in which
17 the supply was restricted below what you perceived to be
18 demand from a purchaser's standpoint?

19 A. No.

20 Q. There has been -- I have heard the word
21 "shorted". In every agricultural community they invent
22 new verbs, but were there any instances in which the
23 purchasers were shorted hops because of the salable
24 quantity?

25 A. Do you mean like John I. Haas has a
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1 purchaser?

2 Q. Correct.

3 A. Because of the salable?

4 Q. Right.

5 A. No.

6 Q. Let us talk a little bit, sir, about,
7 again, your growing operation today. How many acres
8 does your family operate of hops?

9 A. Right now, approximately 700.

10 Q. And how has that changed since the
11 termination of the prior order?

12 A. Well, we had increased towards the end of
13 the prior order. Then that decreased between then and
14 now substantially, and increased somewhat in the last
15 few years back up.

16 Q. Please describe how your mix of hop
17 varieties has changed over the last ten years.

18 A. Well, we are growing substantially more
19 aroma hops. We were kind of latecomers on the super
20 high alphas, but we have moved into those to a certain
21 degree, and we grow some other varieties.

22 Q. There has been some discussion, Mr.
23 Gasseling, of the available outlets, sales outlets, for
24 Washington -- excuse me -- northwest farmers and the
25 hops they grow. First, I should ask, is a 700 acre hop

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1 ranch -- does that put you in the top half for size,
2 bottom half, about average -- do you know?

3 A. I would say we are probably in that
4 middle range.

5 Q. As a middle tier hop grower, describe if
6 you would what you understand to be or believe to be the
7 available sales outlets for your ranch's hops.

8 A. Well, right now, our outlets for our hops
9 are two major breweries. We sell directly to two major
10 breweries, Anheuser Busch and Coors, and we sell to what
11 I consider the two major dealers, Haas and Steiner.

12 Q. There has been some question -- I believe
13 you may have been quizzed on earlier about Janiecke.

14 A. Albert Janiecke?

15 Q. Janiecke. Okay. Is that, in your
16 opinion, as a mid sized grower, is that an outlet for
17 your hops?

18 A. No.

19 Q. How about Hesselberger?

20 ***

21 ADMINISTRATIVE LAW JUDGE: Would you spell
22 Janiecke?

23 MR. MONAHAN: Not a clue, Your Honor.

24 ADMINISTRATIVE LAW JUDGE: Mr. Gasseling, do
25 you know? Or does any member of the Proponents

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1 Committee know the correct spelling of Janiecke?

2 MR. MONAHAN: Our best guess, Your Honor is
3 J-a-n-i-e-c-k-e.

4 ADMINISTRATIVE LAW JUDGE: Thank you. J-a-n-
5 i-e-c-k-e. Thank you. You may proceed, Mr. Monahan.

6 MR. MONAHAN: Thank you, Your Honor.

7 ***

8 BY MR. MONAHAN:

9 Q. How about Hesselberger?

10 A. No.

11 Q. LupeX?

12 A. No.

13 Q. We have heard a lot of testimony about
14 Yakima Chief and that it purchases in the neighborhood
15 of 20 to 25 percent American hops. Is that an outlet
16 for your hops?

17 A. Not really. We have had the ability or
18 the chance to put some hops in their -- what they call
19 their industry pool they started last year and this
20 year, but as far as participating beyond that, we don't
21 have that ability.

22 ***

23 ADMINISTRATIVE LAW JUDGE: If I could, Mr.
24 Monahan, just so I understand this -- Mr. Gasseling, you
25 know that the Janiecke business is a dealer in hops?

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1 MR. GASSELING: As I said the other day, I
2 didn't really know whether -- and don't really know
3 whether Albert Janiecke is offering independently or
4 operating for somebody else. I have no contact with him
5 so I don't know.

6 ADMINISTRATIVE LAW JUDGE: All right. And
7 with regard to Hesselberger, do you know if that is a
8 dealer in hops?

9 MR. GASSELING: Personally, I don't.

10 ADMINISTRATIVE LAW JUDGE: And do you know how
11 that is spelled?

12 MR. GASSELING: No, I don't.

13 ADMINISTRATIVE LAW JUDGE: All right. Mr.
14 Monahan, can you help me here?

15 MR. MONAHAN: I took notes when I believe Mr.
16 Moody spelled it for the record. I have
17 H-e-s-s-e-l-b-e-r-g-e-r.

18 ADMINISTRATIVE LAW JUDGE: All right. And
19 then Lupex, is that L-u-p-e-x?

20 MR. GASSELING: I don't know. I think so, but
21 I am not sure.

22 MR. MONAHAN: I believe so.

23 ADMINISTRATIVE LAW JUDGE: Mr. Carpenter is
24 nodding yes. Thank you. Do you know, Mr. Gasseling,
25 Lupex to be a dealer in hops?

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1 MR. GASSELING: I just know the name, but I
2 don't know how they operate.

3 MR. MONAHAN: Thank you.

4 ***

5 BY MR. MONAHAN:

6 Q. Again, from someone who has had a lot of
7 years in the industry, and as a current grower of hops,
8 do you have a feel for what percentage of American hops
9 are purchased by the combination of S. S. Steiner, John
10 I. Haas, Yakima Chief, Anheuser Busch, and let us say
11 Coors -- and I used the word "purchased". I would
12 include consign in there as well.

13 ***

14 ADMINISTRATIVE LAW JUDGE: And you left out
15 Hop Union on purpose?

16 MR. MONAHAN: I did, Your Honor.

17 ADMINISTRATIVE LAW JUDGE: Okay.

18 MR. GASSELING: I am going to do just a little
19 calculation here. I would say that between Haas,
20 Steiner, Yakima Chief, AB, and Coors, it is over 90
21 percent.

22 MR. MONAHAN: Thank you.

23 ***

24 BY MR. MONAHAN:

25 Q. Sir, describe -- we have heard from a

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1 couple of witnesses and I don't want to be cumulative of
2 the testimony so far, but I would like you just to
3 describe briefly your role and experience that brought
4 you to be part of the Proponents Committee. What
5 efforts were made by the Proponents Committee to come up
6 to this document that has been printed in the Federal
7 Register?

8 A. Well, I think that Steve Carpenter gave
9 pretty much the outline. I was asked to serve on the
10 original committee to come up with some suggestions as
11 to how we could -- and this was through Hop Growers of
12 America -- take care of the over-supply situation that
13 we have had in the industry. When this discussion first
14 started -- and I might even back up to the point of the
15 alliance -- we heard about the alliance. I joined the
16 alliance, or our farm joined the alliance, but I told
17 everybody upfront that unless the agreement was
18 mandatory and that there were some kind of teeth in the
19 program, that we would not participate. We would agree
20 that we would not increase our acreage or slightly
21 reduce it, but I would not sign an agreement that did
22 not have any teeth in it. So we were members, but as
23 far as participating under the signed agreements, we
24 didn't do that.

25 Q. What was your concern about having teeth

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1 in the agreement, sir?

2 A. Well, I have been in this business a long
3 time, and it seems to be that you can be told one thing,
4 but something else happens. And this voluntary program,
5 from whatever it might be, whether or not it is
6 reporting acreage or reporting your sole position,
7 unless it is mandatory, you get a skewed number. You
8 don't get an accurate number. I know people who don't
9 report. I know people who report erroneously, because
10 it is voluntary. So my feeling is unless we all have to
11 do it and do it properly, I would just as soon not have
12 any type of reporting. So that is the reason that I was
13 opposed to the way the alliance worked. When we started
14 the set aside program, I had the same concerns. That is
15 why a contract was actually drawn up whereby growers
16 signed it and they were -- it was a legal binding
17 contract. We participated in that and I felt that that
18 program had tremendous merit and would work
19 exceptionally well. As it turned out, it didn't go
20 through. So then we -- moving on, we got involved in
21 this business at Hop Growers of America. I served on
22 that original committee. Again, the concern was that --
23 and at this point, I think the majority of the growers
24 said that if we are going to have a program, it has to
25 be mandatory. We can't have these voluntary programs

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1 anymore. So we started this, and I can tell you
2 upfront, I was not in favor of a federal marketing
3 order.

4 Q. Why not?

5 A. Well, because I felt that given what
6 happened under the other one, and the inequities under
7 the other one, I just felt there was no way that a
8 federal marketing order could work. But I agreed, and I
9 think that is probably why one of the reasons I was
10 asked to sit on that committee was because I was against
11 this type of a program. As we sat down and went through
12 this process and looked at what alternatives we had for
13 some kind of a mandatory program that was legal, we had
14 suggestions on great programs, but the problem is they
15 were illegal, so we couldn't do them, you know. So at
16 the end of the day, the only one that was left was this
17 proposed federal marketing order. And the committee
18 started out with an entirely different looking document
19 than we have had today. We have heard testimony that we
20 should have two different bases, we should have aromas
21 out and we should have aromas in, and we should not have
22 an alpha factor, and we shouldn't set certain things.
23 But after considerable discussion with the trade, people
24 in the trade, as well as on both sides, you know. This
25 was not just a proponent situation. Everybody had the

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1 chance to comment. I changed my mind because this
2 marketing order is different than the other one. We
3 have a different industry today. We have a different
4 set of circumstances. We have a different situation
5 with regards to who the players are today. And the
6 inadequacies of the old order, I feel, were addressed
7 under this proposal and, consequently, can allow that
8 this order can function in a way that it will address
9 situations that occurred in the other marketing order
10 that were inadequate. I also have operated for a number
11 of years under the federal mint marketing order, and
12 contrary to what Mr. Shin says, everybody has a
13 different situation, but in our situation, we are paying
14 for base. The salable is not where I would like to have
15 it, but I look at the return on the investment, and what
16 I can move, and what I can sell, and what I can't. So I
17 think that the provisions in that order that have been
18 incorporated into this one allow for this order to be
19 even more functional than the mint marketing order.

20 Q. Let us turn then, sir, to the specific
21 provisions of the proposed order. You have got a good
22 chunk of information to cover this morning. Let us
23 start with 991.53, and again, for those of you keeping
24 score at home, Mr. Gasseling is going to address
25 Sections 991.53 through 991.58. At the conclusion of

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1 that testimony, he is going to go back briefly, I think
2 after -- we will probably be at a break time by then --
3 and talk about some of the administrative committee
4 provisions that perhaps weren't fully addressed in
5 Portland. Let us start, sir, with Section 991.53. The
6 section is entitled, Allotment Base, and we will go
7 through the specific subsections in a little bit more
8 detail, but I will just ask you to describe for those
9 assembled how the allotment base is supposed to work, in
10 general.

11 A. Okay. You mean, the issuance of it, or
12 how it is going to be determined, or...

13 Q. How about both?

14 A. Okay. When we discussed the
15 representative base period, there was substantial
16 discussion on that because, of course, that is the key,
17 that the industry be relatively satisfied with how the
18 original base allotment is to be issued to make it as
19 fair as possible. There has been a lot of discussion
20 about the fact that we go back to 1979 -- there is a lot
21 of discussion that we don't -- we are not including
22 2003.

23 Q. Do you mean, '97?

24 A. Excuse me -- '97 -- sorry. During this
25 whole discussion, in every one of those years there was

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1 a problem with some area. And so if you eliminated
2 certain years, certain segments of the industry could,
3 in fact, be harmed.

4 Q. Just to back you up one second, a lot of
5 us, certainly, at this table have a lot of background
6 with this document and so we are probably able to jump
7 around from issues a lot easier than maybe some people
8 in the audience. Just in terms of how the allotment
9 base works, every year the administrative committee is
10 to set a salable quantity. Correct?

11 A. Yes.

12 Q. And each grower is going to be able to
13 produce -- excuse me -- to supply, sell, a percentage of
14 that total sale quantity. Is that right?

15 A. Of his allotment base, he will be able to
16 sell a percentage of it.

17 Q. So this allotment base is really going to
18 determine each grower's prorated portion of the total
19 supply available?

20 A. Yes.

21 Q. Okay. Go ahead then. I am sorry.

22 A. So when we looked at this, the grower
23 input was that in 1997; it was a big year for Oregon
24 growers, they wanted 1997 in. It was the first year of
25 powdery mildew, which some growers got hit hard with

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1 powdery mildew. 1998 was the second year of powdery
2 mildew, which was, quite candidly, much worse than '97.
3 It hit varieties that we didn't think it would hit. And
4 it was area specific, so certain growers in certain
5 areas got hit substantially harder. In '99, we had the
6 same thing. In 2000, we had the alliance, people who
7 left acreage out, reduced acreage. 2001 we had water
8 problems, hale problems, set aside problems. And so we
9 looked at this -- and you have to understand that this
10 was put together over a year-and-a-half ago. And so
11 when we put this together, 2001 was the crop that we
12 stopped at. 2002 was added because there is a situation
13 in Idaho whereby there was a new grower and it was felt
14 that that should happen. But that timeframe was set up
15 so that the growers could pick the year where they
16 didn't have any of the major problems for themselves.

17 Q. Mr. Gasseling, why was 2003 not included
18 in the representative base period?

19 A. Well, 2002 and 2003 weren't included
20 because the committee didn't want to happen what we have
21 seen happen, and that is that people have been trying to
22 jockey around to position themselves for a better
23 situation when it comes to the determination of base
24 allotment. I will give you an example why I would be
25 totally against 2003. There were people out there in

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1 the spring of 2003, growers tallying other growers,
2 plant additional acres, because they are going to use
3 2003, and you will get additional base allotment. It
4 had nothing to do with the market demand. There was no
5 inference as to any kind of European crop failure.
6 There was an effort made to circumvent the intent by
7 artificially increasing the allotment. That is why 2003
8 at this point wasn't included. Originally, that is why
9 2002 wasn't included, because it seems to me that it is
10 not fair that people would be allowed or able to do
11 something only to benefit from the fact that that might
12 be the year that it is set.

13 Q. Moving ahead to Subsection (b),
14 Subsection (b) addresses the type of information that
15 growers are to present the administrative committee in
16 order for the administrative committee to determine or
17 prorate these allotment bases. Is that correct?

18 A. Yes.

19 Q. Can you just describe in general terms --
20 I see there are numbers 1 through 7 -- what that
21 information entails and why that is going to be
22 important to the administrative committee to make this
23 decision?

24 A. Well, basically, the concept is that each
25 grower would take a look at each one of those years,

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1 take their production for that year, take their alpha
2 acid percentages for those varieties above 10 percent,
3 and that would include the pounds they grew, the alpha
4 percentages, and on the hops below 10 percent, whatever
5 poundage there, times ten, and they would present that
6 information to the committee. And they would have to
7 present the information in a fashion that could be
8 verified as best as possible. That would include
9 weights, varieties of bales per pound -- weights would
10 be pounds -- alpha percentages over 10 percent for
11 verification by the committee to determine the total
12 base allotment. Now, there was also a question as to
13 what would happen if a grower did not have that
14 information. Now, that information on alphas might be
15 the state analysis or dealer analysis. If that
16 happened, and the intent of the committee was that they
17 would use an average alpha number for that particular
18 year, and that is what that grower would then utilize in
19 his calculation.

20 Q. As someone who has never seen an actual
21 hop grower return, can you tell me what type of
22 information a dealer or a brewer might give to a grower
23 with respect to this type of information, variety,
24 pounds, et cetera?

25 A. Well, every hop that is delivered

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1 somewhere to someone, there are weights. The weights
2 are taken. There is a leaf and stem analysis done on
3 everything, state leaf and stem analysis. In many cases
4 when those are done, the grower requests a brewing value
5 certificate on that lot so there are a number of lots
6 that the grower actually has a state brewing certificate
7 which shows the alpha acid. In every instance I am
8 aware of, if my hops are delivered to a dealer, one of
9 the major dealers, they do -- and quite frankly, I don't
10 think it makes any difference whether I contracted with
11 them or not. I think those analyses are -- in fact, I
12 know those analyses are taken so the dealers have
13 brewing value analyses of the lots that they handle. So
14 they would be able to supply brewing value analyses.
15 They would be able to supply a lot weight analysis and
16 that information. And again, anything below 10 percent,
17 we are not interested in, quite frankly, under this,
18 what the actual alpha acid is because it is
19 automatically given a 10 percent factor.

20 Q. Can a grower sort of pick and choose the
21 year for allotment base? For example, could I say, gee,
22 I got hammered by powdery mildew on my CTZ's in 1998, so
23 I am going to take my 2002 CTZ's and my '97 Willamettes?

24 A. No. You have to choose a year and use
25 the production from that year alone.

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1 Q. Let us say that my nuggets did 12 percent
2 alpha for a period of three years, but the year that I
3 actually designated as my allotment base year, they did
4 14 percent. Is there an average or do you just use the
5 alpha percentage of the year in which I have chosen?

6 A. Well, I would think that, you know, we
7 might not be too smart, but I would calculate it on the
8 year that I got the most base allotment issued. And it
9 has been stated here that people would do that and that
10 was the -- when this was put together, I think the
11 committee understood that but there were reasons for
12 doing it that way and I still think they are valid
13 reasons. But I would choose the year where overall the
14 total amount of alpha acid would be the highest.

15 Q. Under Subsection (b)(2), the grower or
16 producer is required to set forth the alpha acid
17 percentage for the variety of hops of greater than 10
18 percent. Your understanding is that information would
19 be readily available to the grower for each harvest
20 year?

21 A. Well, I think overall it is. There was
22 some question by some committee members that a couple of
23 dealers, or at least one dealer that wasn't in business
24 at this point, there might be some problem of going back
25 to 1997 or '98. I understand that some of that has been

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1 resolved, that that information is, in fact, there. But
2 that is why it was determined that if all else failed,
3 you could go back to the average alpha acid for the
4 state for that variety for that year and use that.

5 Q. Why did the committee decide --
6 yesterday, Mr. Roy talked about the alpha acid factor
7 that would be set for each variety in terms of setting
8 each year's percentage of allotment. Is that right?

9 A. Yes.

10 Q. Why not use the alpha...

11 ***

12 ADMINISTRATIVE LAW JUDGE: We need to change
13 tape at 10:22.

14 ***

15 [Off the record]

16 [On the record]

17 ***

18 ADMINISTRATIVE LAW JUDGE: We are back on
19 record at -- I don't know -- I said 10:28, but it was
20 10:23. I looked at my watch wrong. It is 10:23. Mr.
21 Monahan, would you start that last question over,
22 please?

23 MR. MONAHAN: Thank you, Your Honor.

24 ***

25 BY MR. MONAHAN:

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1 Q. Why not use the alpha acid factor for the
2 initial issuance of allotment base?

3 A. Well, the alpha acid factor is only there
4 so that it allows a grower to sell hops based on pounds
5 of hops utilizing this factor. It has nothing to do
6 with actual establishment of a grower's individual base
7 allotment.

8 Q. Why not take the same approach and
9 establish any initial allotment?

10 A. Well, I think that the committee's
11 feeling on that was that growers had that information,
12 that information was available, and that we could, in
13 fact, do an actual for the determination of base
14 allotment. You could do the same thing for the other
15 side, and we talked about that, that you would use the
16 grower's actual alpha acids. The problem is it created
17 some difficulty in the ability of a grower to sell,
18 because if he sold 40,000 pounds or 100,000 pounds, and
19 he was basing his alpha on one level, and it came in
20 another level, all of a sudden, the pounds of hops had
21 to change. So this way, selling-wise, the pounds of
22 hops, if you sell 40,000 pounds, you can deliver 40,000
23 pounds. So that is why we went that way.

24 Q. 991.53(b)(5) addresses a hardship. Can
25 you describe what that is, what it is intended to

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1 accomplish?

2 A. Well, the concept there was that there
3 may be a situation where a grower would have had a
4 problem that would directly affect the calculation of
5 their base allotment, and the way it is set up here,
6 they would have to approach the committee. It would
7 have to be some kind of a hardship that was brought on
8 by an act of God. So in this timeframe, if a grower for
9 some reason got haled out every year, or in all of these
10 years he had a major problem from one thing or another,
11 he could come to the committee. Actually, it would be a
12 subcommittee set up, and present their case as to why
13 their salable -- or their initial allotment base should
14 be different. And then the subcommittee or, in fact, if
15 the subcommittee wished, they could put it to the full
16 committee, would make a determination. And if it was
17 shown that that was definitely a hardship, then they
18 could adjust that grower's allotment, initial allotment.

19 Q. My guess is you are going to hear a
20 number of hypotheticals this morning about what may
21 constitute an act of God, and I would ask if you can
22 just expand on what the Proponents Committee intended to
23 include by that reference.

24 A. Well, as I told you earlier, the
25 different things that happened in those years with

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1 all of those types of things would definitely -- you
2 know, mildew, insects...

3 Q. Do you envision the hardship committee
4 remaining in existence throughout the duration of the
5 hop marketing order or is this only an initial committee
6 for the specific purpose of considering issuance of
7 initial allotment base?

8 A. It is only for the issuance of initial
9 allotment base.

10 Q. In subsequent years when it comes to --
11 can hardship issues be considered by the committee in
12 subsequent years?

13 A. Well, I don't see where it would be
14 germane to the running of the order. The initial
15 allotment base is established. After that happens, you
16 have other mechanisms that kick in to take into account
17 what happens after that. So the hardship committee,
18 virtually, I don't think would have any role after that.

19 Q. Let me give you a couple of examples. I
20 know we will get into it a little bit later, but let us
21 say in years nine and ten of the marketing order I get
22 hit with the next generation of powdery mildew, the next
23 fungal or pathogen that destroys my crop, and the year
24 after that my water gets cut off, and as a result, I am
25 not able to actually come anywhere close to fulfilling

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1 my base or selling enough hops to achieve my base. As I
2 understand -- again, we will talk about it in a
3 minute -- I could then lose that base if I am not using
4 it. Is that right?

5 A. Well, if a bona fide effort requirement
6 is set such that the minimum that you produce was below
7 that, that could happen. But under that circumstance,
8 the committee has the ability to temporarily suspend the
9 bona fide effort rule, increase or decrease the
10 percentage on the bona fide effort, make an exception if
11 that happened that would take into account that. So
12 from that point on, the committee has the ability to do
13 that, and it is not a hardship committee case.

14 Q. Thank you. Take a look at 991.53(c), if
15 you would, and Sections 1 and 2 thereunder address how
16 the initial allotment base is calculated for each
17 grower. Is that right?

18 A. Yes.

19 Q. We have heard some testimony that if your
20 variety is greater than 10 percent -- excuse me -- if
21 your alpha is greater than 10 percent for a particular
22 variety, then you just multiply that percentage times
23 the pounds of hops. Right?

24 A. Yes.

25 Q. And if the alpha percent is less than 10

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1 percent, then it is stepped up to 10 percent?

2 A. Yes.

3 Q. Explain the reasoning behind that
4 distinction.

5 A. When discussions first started about how
6 to put this together, as I said, there was a discussion
7 of keeping aromas in, aromas out, aromas under a
8 separate base allotment within the confines of the
9 order, similar to the mint, spearmint marketing order,
10 where you actually have scotch and native. There was
11 considerable discussion about that, discussion about
12 leaving the aroma growers out or the aroma hops out of
13 the marketing order. It sounded good in the beginning,
14 but then a number of growers who were substantially
15 large aroma growers, a number in Oregon and a number in
16 Washington said, well, there is a couple of things going
17 to happen. Number one, as soon as you get your house in
18 order on the alpha side, there is no regulation on the
19 other side. Consequently, you can cannibalize our
20 business. The other side was that if you leave the
21 aroma grower out, and I think it was alluded to there
22 could be a situation where a grower was directly
23 contracted to a brewery, and I will use as an example
24 because they are a major purchaser, if Anheuser Busch
25 was buying aroma hops from a particular grower, had a

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1 great relationship with that grower, then they decided
2 to change the type of variety they use from an aroma to,
3 let us say, an alpha variety, that grower would have no
4 recourse to -- or Anheuser Busch couldn't actually buy
5 those hops from that grower because he would not have
6 any ability to deliver those type of hops. So finally,
7 after much discussion with everybody, we came to the
8 conclusion, and based on the fact that at the end of the
9 day it is all bettering units, that we would combine
10 everything under one and allow flexibility of buying and
11 selling under that umbrella. Now, that created a
12 problem because, as we all know, the alpha side of the
13 equation is the one that is the most out of balance, and
14 we didn't want to penalize the aroma side. So there was
15 a consensus in the industry that hops above 10 percent
16 were considered kind of a rule of thumb. It is not
17 written in any journal, but anything over 10 percent --
18 10 percent or over was kind of considered a high alpha,
19 and anything below that was in the aroma category. By
20 using that term, it also took into account the situation
21 with the aroma side being in balance in the beginning.
22 And if you put a factor on aroma side, you could have a
23 cut in salable, a substantial cut in salable, to address
24 the alpha side and not affect the market and the
25 marketability of aroma hops. An example would be that

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1 if you produced a 3.5 or 3 percent alpha hop, you could
2 take a cut of substantially more than 50 percent and
3 still be able to deliver every hop that you would have
4 contracted. So the aroma grower would not be in a
5 situation where they would be not able to deliver the
6 aroma hops.

7 Q. Would it be fair to say that the intent
8 of this stepping up to 10 percent for aroma hops was to
9 protect the base of aroma hop growers?

10 A. From the ability to sell, you mean?

11 Q. That is right.

12 A. Yes, it was. And it was the consensus of
13 everybody that we did not want to affect the ability of
14 the aroma grower to deliver their hops because those
15 hops were being contracted at very good prices and it
16 was in balance, so in no way did we want that to affect
17 that side of the equation.

18 Q. Take a look, sir, at 991.53(d) and
19 describe why the proponents elected to empower the
20 administrative committee to adjust allotment base.

21 A. Well, I could envision that -- there are
22 two kinds of adjustment here. There is the adjustment
23 where the committee would periodically evaluate at least
24 every five years each producer's allotment. And if
25 there were changes in production, or demand, or

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1 whatever, the committee could adjust the overall formula
2 and base allotments. The second area was that it is,
3 basically, the new entry situation for the industry.
4 And that was to take into account how you could, in
5 fact, issue additional allotment base to new growers and
6 to existing growers.

7 Q. The verbiage specifically states that the
8 committee must review and may adjust each producer's
9 allotment base. Is it envisioned that, for example, one
10 producer's allotment percentage might go up and
11 another's might stay the same?

12 A. No. I think the intent of this is that
13 the overall allotment base would be adjusted and that
14 would affect every producer. Now, there could be a
15 situation where the committee might say that there is a
16 specific need for -- and I think this is where this idea
17 of a special allotment like there was in the old order,
18 but I would envision that under this, the committee
19 could say that there is a special need for a special
20 variety, and we will make additional base available to
21 the industry for whoever would like to grow that
22 variety, and base allotment could be made available for
23 that specific variety for all growers to participate.

24 Q. Is that a scenario you envision might
25 occur after discussion, dialogue, with brewers, and

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1 dealers, and other users and purchasers of hops?

2 A. Yes.

3 Q. It states here that the adjustment would
4 have to be made in accordance with a formula. Has that
5 formula been derived yet?

6 A. No.

7 Q. That would be prescribed by the
8 committee -- I will ask, do you envision it being rubber
9 stamped by the Department of Agriculture?

10 A. I envision it being stamped by the
11 Department.

12 Q. What is the role of the Secretary of the
13 USDA in these types of situations that require approval?

14 A. Well, the committee would submit the
15 proposal and the justification for the proposal to the
16 Secretary, and then the Secretary would evaluate the
17 proposal and approve or disapprove.

18 Q. Jump ahead, if you would, to Subsection
19 (f), which addresses the bona fide effort requirement,
20 and describe how that is intended to work.

21 A. That is an important part of the
22 marketing order as far as I am concerned, because the
23 critical issue is that we have growers that are actually
24 growing apposition of the base allotment. And so that
25 is -- when you look at the situation once the order

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1 would be in, this would force growers to grow or somehow
2 transfer their allotment to somebody who is growing, not
3 allow a producer to maintain an allotment base and not
4 use it, and thus, create a problem for the rest of the
5 industry.

6 Q. I didn't mean to jump over the additional
7 allotment base. That was my error. Back up, please, to
8 Subsection (e) and tell us how the issuance of
9 additional allotment base is intended to work.

10 A. Well, I think that there was as
11 considerable amount of discussion about how that should
12 work. And under the mint marketing order, there is
13 additional allotment base made available every year, but
14 it seems to me that that kind of is ridiculous. If your
15 salable is being reduced or stays the same, it means
16 that the production that is out there at the time takes
17 care of the needs, and to add additional allotment onto
18 the scene, it just doesn't make any sense. All that
19 would create is to, ultimately, have to reduce the
20 salable because you don't want to put anymore than what
21 you have set. So this was put in so that in years when
22 the salable is increased, the committee can make
23 available up to 1 percent of whatever the overall
24 allotment is. And half of that would go to new growers
25 and half of that would go to existing growers.

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1 Q. Section (e)(2) addresses the manner in
2 which a person could apply for additional allotment. If
3 the committee has elected to, let us say, issue an
4 additional 40,000 pounds of alpha in allotment; 20,000
5 can go to a new grower, would be available for new
6 growers, 20,000 would be available to existing growers.
7 Is that right?

8 A. Yes.

9 Q. Let us just take a hypothetical. You
10 have got 20,000 pounds of alpha that is made available,
11 25 existing growers apply for it. How is the
12 administrative committee going to figure out where it
13 goes?

14 A. Well, I think the administrative
15 committee would take into account what makes an
16 economical unit, what makes sense, realistically, to put
17 out there, and how to put it out there. It would do no
18 good to -- you know, you could have 20,000 pounds and
19 have 20,000 people apply and get one pound. That
20 wouldn't make much sense. So the concept is the
21 Committee would look at this, set a set of criteria for
22 the number of new growers that they would allocate this
23 to, and if you have more people requesting the new
24 grower base than as your criteria, then you go to some
25 kind of a lottery system or a drawing system where they

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1 would be chosen, and whoever got chosen would get the
2 allotment.

3 Q. What would prevent hypothetical committee
4 member Tom Gasseling from making sure that 20,000 pounds
5 went to hypothetical new grower Dale Gasseling?

6 A. Well, I think that it would be set up
7 that that new grower application, they would have to
8 show that they are actually a new grower. They would
9 have to have land, they would have to have the ability
10 to farm it, they would have to have their own line of
11 credit, you know. Again, if you go back to the mint
12 thing, it is pretty specific as to what a new grower is,
13 and the committee, I think, would set up the criteria so
14 that any kind of a shell game would not be acceptable.
15 In that case, you know, my son could apply, but if I
16 were doing all the financing, and it was all my land,
17 and all my equipment, and it was kind of just a shell
18 thing, he would not be eligible for a new base.

19 Q. Irregardless of how shells might work,
20 what is to prevent favoritism in the issuance of
21 allotment to new growers?

22 A. Well, I think that it would be a
23 situation where once the committee set the criteria for
24 the new allotment, then there would be the ability to
25 apply for that. And based on the application, if there

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1 were -- based on if it was available to two people, let
2 us say, and you had two people apply, there would be no
3 problem. If you had one person apply, it would be no
4 problem. If you had three people, then I think you have
5 to go to some kind of a lottery system, or a random
6 draw, or something like that, where it becomes not a
7 choice of who gets it and who doesn't get it by the
8 particular committee members.

9 Q. Would you envision that the availability
10 of new allotment, additional base as it were, to be made
11 available to the small community -- not available, but
12 to be made known -- excuse me -- to the small community
13 of hop growers or published statewide? For example, if
14 I am a wheat farmer in Walla Walla and I want to put my
15 bid in for a new hop allotment, how would I know about
16 that? How would I know it is available?

17 A. That is a really good question. I am not
18 quite sure. I think, though, it would be published, I
19 imagine, somehow where this allotment was being made
20 available, and this is how you would go about applying
21 for it.

22 Q. The idea, though, is it would not just be
23 made available to the small hop growing community -- it
24 would be available to anyone who did apply?

25 A. It would be available to anybody.

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1 Q. Go back to Sub (f) if you would, and
2 explain why it is required -- or I will read you the
3 sentence that I am interested in. It says the right of
4 each producer receiving an allotment base for any legal
5 successor interest to retain all or part of an allotment
6 base shall be dependent on continuance to make a bona
7 fide effort to produce the annual allotment referable
8 thereto. And failing to do so, such allotment base
9 shall be reduced by an amount equivalent to such
10 unproduced portion. I have heard this referred to the
11 use it or lose it rule. Is that a fair...

12 A. Yes, and I think it needs to be
13 explained. It is not your total allotment that the bona
14 fide effort requirement is based on. It would work --
15 this is an example. If I had 100 pounds of allotment
16 base, and the salable for that year was 80 percent, I
17 could sell 80 pounds. If the bona fide effort
18 requirement was 80 percent, it would be 80 percent of
19 the 80 pounds, not of the 100 pounds. The bona fide
20 effort goes strictly to the annual salable.

21 Q. Does this proposed marketing order set
22 forth a percentage that is the bona fide effort
23 requirement or is that something you would envision
24 being set by the committee?

25 A. No. Those rules and regulations

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1 requiring that the bona fide effort, what the percentage
2 would be and the years to come into compliance,
3 everything would be set by the committee.

4 Q. If you lose it, where does it go?

5 A. Well, if you didn't transfer it away in
6 some fashion, it would go back to the committee and it
7 would just disappear. Now, the committee might decide
8 to issue that in some fashion, but it goes back to the
9 committee.

10 Q. I would imagine if I were a hop farmer,
11 despite -- let us say I decided I didn't want to make a
12 bona fide effort, I could -- I would have some options.
13 I could try to sell the base. Is that right?

14 A. You could transfer it.

15 Q. What does that mean?

16 A. Well, ultimately, if you transferred it,
17 you would either lease it or sell it to somebody.

18 Q. Is there such...

19 A. Or you could give it to them if you
20 wanted to.

21 Q. Is there such thing as loaning allotment
22 base? For example, if I realized that I don't have
23 contracts to fill my entire annual allotment base, how
24 would you describe my ability to supply hops in a given
25 year, a salable percentage?

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1 A. Your salable quantity.

2 Q. My salable quantity. Because I don't
3 have contracts, I don't think that I can actually
4 fulfill it, can I say to my neighbor, hey, you can take
5 my 50 pounds?

6 A. You can transfer your allotment to your
7 neighbor under certain restrictions. Number one, that
8 grower -- you have to transfer it for two years, first
9 of all.

10 Q. Just so we are not guessing, why don't we
11 go ahead and get 991.58 -- I don't mean you. I am the
12 one guessing. Is this the provision, 991.58, that
13 addresses transfers?

14 A. Yes.

15 Q. Can you just describe how this is
16 intended to work?

17 A. A producer can transfer allotment to
18 another producer. The intent here is that it can't be
19 transferred back to you for two years. The producer
20 that the allotment is being transferred to has to be
21 able to show the committee that, in fact, they have the
22 ability to produce that additional allotment. So what
23 that means is if my neighbor wanted to transfer some
24 allotment to me, and I didn't have the capacity to show
25 that I could produce that allotment, that transfer would

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1 not be allowed. I have to be able to show I can produce
2 it. Likewise, if I transfer it back to my neighbor, who
3 after two years still hasn't done anything to increase
4 his production, I can't transfer it back. He has to be
5 able to show, he or she, that they are, in fact, capable
6 of producing that. And this was put in, and again, the
7 industry was -- and the grower input was very adamant
8 about the fact that we didn't develop a system where it
9 was just trading in base allotment every year, which did
10 happen under the old order. This way it keeps the
11 allotment in the hands of the people that are actually
12 growing the product and eliminates this trafficking
13 allotment all the time.

14 Q. I will concentrate on (a) for a second,
15 because I think you have addressed (b), and give you a
16 hypothetical. I am a grower in Moxee and I have got 40
17 acres of Zeus, but for competitive reasons, I want to
18 own a different maybe soil profile, maybe I want a
19 different microclimate, bring my hops onto the market a
20 couple of weeks earlier. I want to take my 40 acres and
21 move them to Prosser. Is there anything that prevents
22 me from doing that? Can I -- will this restrict where I
23 can grow hops?

24 A. No.

25 Q. So it is just -- I can produce as much as

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1 I want, wherever I want. It is just a volume sale
2 control?

3 A. Within this production area that is
4 covered.

5 Q. Right. If I understand correctly, then
6 if I am producing less than my annual salable, I am not
7 able to loan out or give base except on this two-year
8 proposal under transfers. What if I produce more than
9 my base? What if I have a 100,000 pound salable and I
10 produce 120,000 pounds?

11 A. The excess goes into the pool.

12 Q. Can I...

13 A. You know, one thing I would like to
14 clarify on the bona fide effort, also, in the
15 calculation, if you have reserve pool product, that
16 counts against your bona fide effort. So you can, in
17 fact, not produce in a given year actual production that
18 puts you in a situation where you don't meet the bona
19 fide effort, but you have pool product that when you
20 include that does meet the bona fide effort, you don't
21 have to produce it in that given year. You can use both
22 in the calculation.

23 Q. Thank you. I apologize for hopping
24 around a little bit, but rather than go through
25 sequentially, I am just trying to follow the logical

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1 train of thought. Tell me how excess production is
2 handled under this proposed order.

3 A. It is under -- well, there are two
4 sections -- 991.56 and 57.

5 Q. Describe how 991.56 operates.

6 A. This refers to excess hops and hops
7 products. The intent of this is that in a given year a
8 harvest takes place and a grower has excess production
9 above his salable, and his neighbor is not able to fill
10 his salable, up to a certain date after harvest, by
11 notifying the committee the grower has produced above
12 his salable allotment, can, in fact, transfer that
13 product to his neighbor or to anybody else to fill a
14 deficiency.

15 Q. Just find his neighbor and stencils the
16 grower number on the bales?

17 A. Well, it actually is a legal transfer, so
18 he is taking his hops that he produced and he can
19 transfer them to that grower. And ultimately, what
20 happens is the report shows that this grower
21 overproduced 20 pounds, this grower under produced, this
22 20 pounds was transferred. So the concept is you never
23 get above in total what the salable allotment is for the
24 industry for that year.

25 Q. And how that transfer is handled between

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1 those two growers is up to them -- sale, gift, purchase?

2 A. Sale, gift, purchase, whatever. The
3 committee doesn't care about that. All they have to do
4 is track that the pounds moved to a deficiency
5 situation.

6 Q. Let us say I am a grower and I am not in
7 the giving mood, and I have produced more than my annual
8 salable, and I am not interested in giving it to anybody
9 else. What are my options?

10 A. Well, if you decide in that timeframe
11 these hops which are considered excess hops, you don't
12 want to do that, you have the ability then after that
13 cutoff date, those hops would go into the reserve pool.

14 Q. Describe how the reserve pool works.

15 A. Those are hops that are produced above
16 your salable quantity for that year. They cannot be
17 sold and so, consequently, they are put into that
18 reserve. Now, I, as a grower, maintain control over
19 that. The committee knows -- they have the records that
20 I have X pounds in a reserve pool. I control that
21 product. I decide where it is going to be stored, I
22 decide what form it is going to be stored, and I have to
23 maintain the records on it to verify to the committee.
24 In the next growing season, or going into the next
25 season, there are different ways I can get that product

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1 out of this pool. I can decide that I don't want to
2 grow everything for the next year because I have this
3 excess product, so I can, in fact, grow less. If I have
4 100 pounds in my pool, and I decide to grow 100 pounds
5 less for the coming crop year, I can then take that out
6 and fill my salable. Also, if I do decide to grow
7 everything so that, basically, that pool quantity stays
8 there, and the committee decides at some point in that
9 subsequent year to increase the salable, whatever that
10 increased salable amount is I can actually take out of
11 that pool and use to fill that salable amount.

12 Q. You say take out of that pool. The
13 committee never gains control or possession of the
14 grower's excess production. Do they?

15 A. No. And I think this is a real key
16 issue. The old marketing order, the committee
17 controlled the hops entirely. They decided when to
18 sell, and how much to sell, and what to sell it for. We
19 also had a problem in that virtually everything in those
20 years was raw hops, mostly clusters, so after those hops
21 sat -- and there was, in fact -- under that, there was a
22 storage controlled by the committee, so the grower --
23 you put your hops in a storage that the committee
24 controlled because they had absolute control. After a
25 year or so, hops don't smell so good anymore. So what

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1 actually happened was they would sell enough out of the
2 pool to pay for the expenses, and we had an outlet
3 called Package Hops, which you made these little bricks
4 for home brewing, and they were sold at, basically,
5 blowout prices. So it wasn't a well functioning
6 situation and growers didn't want to do that. And I
7 think you heard the allusion to round bales and midnight
8 express. Well, what happened was growers, when they
9 found out they were going to have pool hops, said I have
10 no way legally to take care of that situation. I don't
11 want to put them in there. So they would load a truck
12 at night with hop bales and, you know, balls to the wall
13 down the road at night, and if you were coming the wrong
14 way sometimes, you know, it was dangerous as heck in
15 this valley at night during harvest because there were
16 bales going everywhere.

17 Q. The record will reflect that you meant
18 pedal to the metal.

19 A. Pedal to the metal -- excuse me. But it
20 was an amazing thing. There was actually a sub market
21 and probably the largest dealer in the industry was the
22 smallest, but they had this ability to move these hops.
23 So that is another reason this was set up this way so it
24 eliminates any need for anybody to feel that they have
25 to do anything illegal because they lose control of

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1 their product.

2 Q. Would it be fair to say that you are not
3 as enamored with the prior hop marketing order as some
4 of your fellow proponents?

5 A. Yes.

6 Q. Is the reserve pool provision something
7 that you consider to be a marked improvement over the
8 prior order?

9 A. I definitely do because although I don't
10 envision substantial quantities, growers putting
11 substantial quantities in there, because it is costly,
12 as you have been told in that previous testimony to
13 process these hops -- 60 cents a pound for extract, 18
14 to 20 cents a pound for pellets. So unless you have a
15 huge amount of cash laying around, you are not going to
16 want to put a substantial amount in there. But you can
17 use it as a marketing tool. You can say, as I think was
18 testified to earlier, I want to take some acreage out
19 next year, replant. I can grow more this year and then
20 use that product next year so that I can do my
21 replanting and so forth, but I don't lose the production
22 base. So it allows for tremendous flexibility in the
23 event there is an unforeseen world crisis or crop
24 failure like we had in Europe. We actually -- the
25 potential is there and very likely there would be

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1 additional product available to supply that situation.
2 What happens, once you start to grow the crop, you grow
3 the crop based on what you think you are going to sell
4 and what you think you want to have extra. And you have
5 no way to adjust throughout the crop to a crop failure.
6 If there is this reserve pool and there is product in
7 there, and everybody has made a decision of what to grow
8 and something happens, there is the ability to actually
9 in that year, at that time, put additional product out
10 there that would not have been available in any other
11 fashion.

12 ***

13 MR. MONAHAN: Kearney, are you looking for a
14 break?

15 COURT REPORTER: We are very close to it.

16 ADMINISTRATIVE LAW JUDGE: At this time, I
17 would like for us to take a ten-minute break, so at
18 11:06, let us change the tape. Please be back ready to
19 go at 11:16.

20 MR. MONAHAN: Thank you, Your Honor.

21 ***

22 [Off the record]

23 [On the record]

24 ***

25 ADMINISTRATIVE LAW JUDGE: We are back on
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1 record at 11:19. Mr. Monahan, can you think of
2 something to do while we...

3 MR. MONAHAN: Go looking -- well, never mind.
4 We are on the record. Aren't we?

5 ADMINISTRATIVE LAW JUDGE: We are. Shall we
6 go back off for a minute?

7 MR. MONAHAN: I think we can locate Mr.
8 Gasseling. From a housekeeping and scheduling matter,
9 Your Honor...

10 ADMINISTRATIVE LAW JUDGE: Yes, please.

11 MR. MONAHAN: I have learned that a farmer
12 from Oregon, a Mr. Paul Serres, has made the trip to
13 Yakima today. He wishes to testify and get back on the
14 road, so perhaps we could create a slot for him in the
15 early afternoon. In addition, a Washington grower, Gary
16 Morford, would like to appear in the early afternoon.
17 And perhaps what we could do is work with Mr. Gasseling
18 through -- up to the lunch break, and then put those two
19 gentlemen on when we return from lunch.

20 ADMINISTRATIVE LAW JUDGE: All right. Gary
21 Morford is a farmer from what state?

22 MR. MONAHAN: Washington State.

23 ADMINISTRATIVE LAW JUDGE: And I spelled
24 Morford, M-o-r-f-o-r-d. Is that your best guess as
25 well?

1 MR. MONAHAN: Good work.

2 ADMINISTRATIVE LAW JUDGE: All right.

3 MR. MONAHAN: I believe each of those
4 gentlemen has prepared statements as well, and I will
5 try to get those out to people even before the lunch
6 hour.

7 ADMINISTRATIVE LAW JUDGE: All right. That
8 would be great. All right. Thank you. We are still
9 having trouble with feedback from the mic that is
10 between Mr. Carswell and Mr. Moody. I am not quite sure
11 why, but even though you are being very quiet, it gets
12 transmitted somehow.

13 MR. CARSWELL: We are not on -- we are not
14 live.

15 MR. MONAHAN: It might just be where they are
16 in the room, the acoustics.

17 MR. CARSWELL: The acoustics may be such -- we
18 will try to be quieter.

19 ADMINISTRATIVE LAW JUDGE: Well, I know you
20 need to talk with your clients. I just -- I don't hear
21 your clients; I just hear, primarily, Mr. Moody. So
22 perhaps you actually have to turn your head to the back
23 of the room to talk to them so that it doesn't come up
24 to me. All right. Mr. Gasseling -- Mr. Monahan, can
25 you pick us up where we were?

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1 MR. MONAHAN: I think so, Your Honor.

2 ***

3 BY MR. MONAHAN:

4 Q. When we left, we were talking about
5 reserve pool requirements, and tell me -- tell us, if
6 you would, sir, is there any limit on what a grower
7 could place into his or her reserve pool?

8 A. No.

9 Q. Do I understand from your testimony, in
10 your opinion as a grower, that it would be prudent to
11 accumulate some reserve pool?

12 A. I would think that as people study this
13 and understand how it operates, that it would be
14 advantageous to have some product in the pool. And you
15 probably will have a little bit if you produce, you
16 know, decide to produce extra above your salable. So I
17 would think it would be advantageous to have some.

18 Q. Mr. Carswell was kind enough in the
19 hallway to give me a sneak peak at a cross exam
20 question, and I would ask you to take a look at 991.56,
21 addressing excess hops and hops products. As I
22 understand it, 56 identifies those types of hops that
23 would be essentially eligible to put into a grower's
24 reserve pool. Correct?

25 A. Ask the question again?

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1 Q. Yes. 991.56 addresses excess hops, and
2 excess hops are the types of hops, I guess, that could
3 be transferred to another grower or put into a grower's
4 reserve pool?

5 A. Yes.

6 Q. Take a look at Subsection (c) -- No
7 handler shall handle reserve pool asset. If a grower
8 wishes to put hops into a reserve pool; essentially,
9 create a personal inventory to be able to respond to
10 otherwise unforeseen demand, demand in excess of the
11 initial salable quantity, and that grower decides to
12 pelletize or process into extract form, is that allowed
13 under this provision if no handler shall handle reserve
14 pool?

15 A. That is a good question. I mean, I would
16 say processing the into a different form, I would not
17 consider that handling, but then I would have to go back
18 and look at that definition, because the way I would
19 look at this is these are hops that cannot enter the
20 trade so they are not going into commerce. They are
21 hops that are not allowed to move into the market, so I
22 don't consider that to be handling.

23 Q. Just in terms of intent, if I have got --
24 if I am a grower with 100,000 pounds annual salable, and
25 I produce and process into extract form 120,000 pounds

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1 of alpha acid, have I violated the order just by
2 producing it and by processing it? Or is it the intent
3 that I could sell 100,000 of it and keep 20,000 in
4 reserve.

5 A. The latter is the intent. It still comes
6 back to the fact that you can only sell up to your
7 annual salable allotment. Anything above that has to go
8 into the reserve pool. Now, I would imagine and I would
9 expect, given the situation today, that the majority of
10 anything that goes into the pool would be processed in
11 some fashion for stability, because the grower -- once
12 it is in the pool, there is going to be a period before
13 that product can come out. So just from an economic
14 standpoint, I think you would want to have some kind of
15 a processing take place of that product.

16 Q. So the prohibition is -- or for the
17 control is that a grower cannot sell more than the
18 salable quantity, but the grower could handle more than
19 the salable quantity insofar as the term "handle" is
20 equivalent to process?

21 A. Yes.

22 Q. In retrospect, I would like to take a
23 close look at 991.56(c).

24 A. Okay.

25 Q. And tell us whether perhaps that requires

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1 some revision or modification.

2 A. Well, based on the changes we have made
3 in the other definition, I would think this would be an
4 area that it would have to be modified somewhat so that
5 it actually reflected the intent, and the intent of this
6 means that you cannot put any pool product into the
7 trade unless it has the certain requirements. So I
8 think it would have to be rephrased somewhat.

9 Q. I think I saw Mr. Christiansen back in
10 the room, so perhaps this gives us a topic to address at
11 the next break.

12 ***

13 ADMINISTRATIVE LAW JUDGE: Mr. Moody, did you
14 have a comment that would be helpful here?

15 MR. MOODY: Yes. Just for continuity in the
16 record on this point, that section I seem to like a lot,
17 52(b), would need to get fixed, too, because handled was
18 defined to include processing of hops to pellets and
19 acid, which is the storable forms. But you can't handle
20 it without a base, so you can't process it to store it
21 in the reserve pool if it is over your base, so there is
22 an inconsistency that needs to be fixed in 52(b) as
23 well.

24 MR. MONAHAN: 52(b) in the verbiage itself, or
25 in the subsections 1 or 2?

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1 MR. MOODY: Well, I guess you could fix it in
2 the subsection by just putting in an except for
3 inclusion in the reserve pool or something like that.

4 MR. MONAHAN: Okay. Thank you. And thank
5 you, Mr. Carswell, for pointing out that issue.

6 MR. CARSWELL: Just on the language for 56(c),
7 I would think after the language there that is already
8 there, you could say, for example, preparation of raw
9 hops for the reserve pool does not constitute handling.

10 MR. MONAHAN: I am looking to see if Mr.
11 Christiansen is taking notes with us. Thank you.

12 ADMINISTRATIVE LAW JUDGE: Thank you, all.

13 That is very helpful.

14 MR. MONAHAN: Thank you, Your Honor.

15

16 BY MR. MONAHAN:

17 Q. Let me run you back now -- is there any
18 other comments on how the reserve pool or excess hops
19 are to be handled?

20 A. No. I think that pretty much explains
21 it.

22 Q. Turn, if you would, to Section 991.54.

23 Go ahead and describe how Subsection (a) works.

24 A. Well, basically, this section lays out
25 how the actual issuance of the annual allotment would be

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1 given out. Basically, you would apply for your
2 allotment. In actuality, the committee issues an annual
3 allotment certificate and issues it to you based on your
4 overall base allotment so that you know for that given
5 year what your actual salable allotment is going to be.

6 Q. As I read Section (a), it appears -- and
7 again, with hypotheticals, if I have 100,000 pound base
8 and the salable quantity is 90 percent, then I would be
9 informed that for that year I have a -- my personal
10 salable quantity is 90,000 pounds?

11 A. Yes. Usually, the way it works is that,
12 you know, you are given an annual certificate. Here is
13 how I would envision it -- you would be given an annual
14 certificate that shows your actual allotment base, what
15 the salable is for the year so you have your salable
16 allotment, and then as that salable allotment moves, the
17 amount handled is subtracted and recorded as you go
18 along, and that information is supplied to the committee
19 so that everybody knows exactly how much salable
20 allotment you have still available to use.

21 Q. The way this appears to be drafted, at
22 least with respect to subparagraph (b), it indicates the
23 committee will furnish a form that will enable the
24 producer to apply for the annual allotment. Is that
25 right?

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1 A. Yes.

2 Q. What is the purpose of that, and in the
3 context of your answer, does the Proponents Committee
4 envision the administrative committee having some
5 discretion to just say no?

6 A. No. This is intended to set out how you
7 get the information each year back and forth, and this
8 is not intended that the committee can individually
9 address each grower on a different basis. We have to
10 treat -- everybody gets treated the same, and what this
11 means is that they apply in a sense that the committee
12 gives to the grower this information and this has to be
13 accepted by the grower.

14 Q. If, in theory, a grower went out of
15 business and they did not apply for base, would this
16 provision then prevent them from being awarded base that
17 they were not entitled to?

18 A. Well, if that producer decided not to
19 apply for their annual allotment, they wouldn't get it.

20 Q. Okay. Look at Subsection (c) with me, if
21 you would. And first, tell us when was this provision
22 drafted?

23 A. In 2001-2002 or, you know...

24 Q. Okay. And Subsection 991.54(c)
25 addresses -- I think you talked about it before -- the

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1 preservation of written contracts.

2 A. Yes. When we put this together, again,
3 the grower concern, and I think also user concern, was
4 that this marketing order would cut across existing
5 contracts. That is why everybody was put on notice when
6 this was originally drafted that this was going to be
7 the criteria for evaluating contracts that would be
8 exempt. And so consequently, these are the dates that
9 were set and are put forth here. The key thing, I
10 think, for us to remember is that this contract
11 exemption only kicks in once you have used all of your
12 allotment base, salable allotment. So let us say in
13 2004 crop year I had a contract for 100,000 pounds and
14 the salable for that year would be 80,000 pounds. And
15 under this scenario, I would use the 80,000 pounds of my
16 salable, and then without the contract exemption, 20,000
17 pounds would actually be pool product. But given this
18 exemption, I would be able to deliver the total 100,000
19 pounds. The whole idea behind this was that growers
20 with valid existing contracts prior to this
21 implementation should not be penalized and not be
22 allowed to deliver those contracts, with the
23 understanding, of course, that there is a good chance
24 there would be very few contract exemptions because of
25 the actual amount sold ahead as we have seen in some of

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1 these numbers. So there may be some, but when you take
2 into account that you have to utilize your existing base
3 first, and then anything over that would be exempt,
4 there probably is not going to be a whole lot.

5 Q. Why didn't the Proponents Committee -- I
6 should say why did the Proponents Committee insert a
7 cutoff date of January 31, 2002?

8 A. Well, I think you heard substantial
9 testimony that we got a clear message from the industry
10 when we started to put this together, put something
11 together that as much as possible stops abuse. And by
12 doing this, by having a cutoff date in certain years, it
13 then set the premise that somebody couldn't go out and
14 do some kind of funny business on just writing a
15 contract just so that they could get out from under any
16 kind of a salable allotment. So if they were actual
17 contracts for actual amounts, at that point in time, and
18 could be verified, then they should be delivered.

19 Q. When was this announced to the industry?

20 A. I think it was announced when we made the
21 presentation. Well, it actually was announced prior to
22 that because it was a part of the development -- part of
23 it, but it was actually announced when we made the
24 presentation to the industry of this proposed document.
25 And I don't know exactly what the date is. I think

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1 Steve Carpenter would know more about exactly what that
2 date was.

3 Q. I have heard reference to an HGA meeting.

4 A. Yes.

5 Q. How often are the HGA meetings held?

6 A. Once a year.

7 Q. And in January?

8 A. In January, yes.

9 Q. How would you describe the participation
10 of the American Hop Growing Community in HGA meetings?

11 A. Well, I think that, you know, because of
12 the status of the industry, traveling hasn't been
13 real -- a great deal of spending money because the
14 industry has been so depressed. But I think for that
15 meeting, I think when it was announced that there was
16 going to be a discussion on the hop marketing order and
17 proposed hop marketing order and how it would function,
18 we had a full house.

19 Q. I understand that this is about a year-
20 and-a-half old now in terms of drafting, but why was it
21 decided that only acreage produced prior to 2003 would
22 be exempted -- or am I reading that correctly?

23 A. Well, this, again, was to try to
24 eliminate any kind of possibility that additional
25 acreage could be put in or would be put in and

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1 contracted just to circumvent the intent of this
2 section.

3 Q. Give me -- again, just walk me through a
4 hypothetical. On January 30, 2002, I enter into a
5 contract with Steiner to deliver the equivalent of
6 50,000 -- 1,000 pounds of alpha acid every year from
7 '02, '03, and '04.

8 A. Okay.

9 Q. And then my salable quantity is set at
10 800 pounds.

11 A. In each of those years?

12 Q. Sure, for purposes of this hypothetical.

13 A. Okay.

14 Q. What can S. S. Steiner expect from me and
15 what can I expect with respect to my own allotment?

16 A. You would be able to deliver the 1,000
17 pounds in those years.

18 Q. Each year?

19 A. Each year.

20 Q. Okay. What would my allotment be --
21 assuming that my allotment would have ordinarily been
22 800 pounds again in '05, how would delivering over my
23 allotment the prior three years affect what is left of
24 my allotment in '05?

25 A. It would have nothing to do with it.

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1 Q. Read the last sentence for me then and
2 describe what the reference to charges against annual
3 allotment for that year means.

4 A. That means that in -- let us take '02.
5 My annual salable allotment is 800 pounds. I have sold
6 1,000 pounds. The 1,000 pounds first goes against my
7 annual salable allotment. So the first 800 pounds of
8 that contract is covered under my annual salable. The
9 additional 200 pounds is covered under the contract
10 exemption. So I have utilized all of my salable, but I,
11 in fact, delivered 1,000 pounds because the other 200
12 was under contract exemption.

13 Q. So I don't get my 800 pounds plus the
14 1,000?

15 A. No.

16 Q. Okay.

17 A. The second year would be exactly the
18 same. And even if let us say the salable in '03 was
19 less -- let us say it was 600 pounds. The first 600
20 pounds would go against my salable; the other 400 pounds
21 would be contract exempt. And in '04, the same thing.

22 Q. And if I do get this 200 or 400-pound
23 exemption under this provision, it is not charged
24 against my next year's allotment. Is it?

25 A. No.

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1 Q. Take a look at Section 991.55, please.

2 A. Yes.

3 Q. And I would like you to just take a
4 moment, read those to yourself, describe for us what
5 they are intended to accomplish.

6 A. The intent of this section is for the
7 committee to be able to identify each individual
8 grower's production so that the calculation could be
9 made as to whether or not the production is above or
10 below the annual salable allotment. And that if it
11 hasn't been identified -- I mean, the information hasn't
12 been supplied, then it can't be handled, because you
13 can't handle until the point where you verify that, in
14 fact, it is not over your salable allotment.

15 Q. Assume I am Mr. Carpenter and I want to
16 purchase 1,000 pounds of baled hops from Tom Gasseling.
17 Okay? Tom Gasseling is the producer and I am the
18 handler in that situation. Correct?

19 A. Yes.

20 Q. Tom Gasseling, under 991.55(a) and (b) is
21 required to identify hops somehow. Correct?

22 A. Right.

23 Q. As the handler, I am prevented from
24 handling hops or alpha acid that have not been
25 identified in this section. Is that right?

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1 A. Uh-huh.

2 Q. Describe for me how I, as the handler, am
3 going to know if something has been identified. As a
4 practical purpose, what am I looking at? What is the
5 identification?

6 A. Well, every bale has a grower number on
7 it. So when they are talking about -- it has a grower
8 number and a variety on it, stenciled on it.

9 Q. Bales -- if I am buying a bale, tell me
10 what I am looking at in terms of size and appearance?

11 A. It is a 200-pound either burlap or
12 plastic wrapped bale. It is about 5 feet tall, maybe,
13 you know, a foot-and-a-half by three feet, or two-and-a-
14 half feet.

15 Q. If we stood this table on its end and
16 looked at it, it would be about the size of this table?

17 A. It is not quite that big.

18 Q. Okay. And it is wrapped in burlap?

19 A. Burlap or plastic.

20 Q. Okay. And the burlap and plastic can be
21 printed upon, stenciled upon -- you have heard that
22 term?

23 A. Yes.

24 Q. Is the information identified or set
25 forth in 991.55(b) envisioned to be stamped on each

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1 bale?

2 A. Well, it is now, but I think the critical
3 thing is the intent of this is so that you can track
4 that production, and the committee may require it in a
5 different form or in some different fashion. But the
6 intent of this is so that we are able to track that
7 individual grower's production.

8 Q. I understand that, but if I am standing
9 in the shoes of a handler, and I have been reminded by
10 Mr. Moody that I have got these potential fines for
11 violating the order, how do I ensure that I don't handle
12 something that has not been identified, just from a day-
13 to-day practical standpoint?

14 A. Well, it is going to have the name of the
15 producer, it will have the variety. The handler will
16 weigh the bales, so they will have the net weight, lot
17 numbers on there. So all of that information will be
18 available. If it is not on there, then as was under the
19 old marketing order, all of that information had to be
20 on there before those bales could be handled. If it is
21 not on there, they can't be handled.

22 Q. If I am, again, S. S. Steiner, and I am
23 purchasing extract from Tom Gasseling, let us say for
24 whatever reason you have had someone else process it and
25 store it, you are the handler. Right?

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1 A. Uh-huh.

2 Q. Am I still going to obtain from you, the
3 grower/handler in this case, an identification of where
4 that alpha came from, what type of variety it was?

5 A. I would think you would have to. It
6 would have to be traceable through.

7 Q. In the instance of a handler, where the
8 grower and the handler are one and the same, and the
9 grower is preparing his or her hops for market, is that
10 type of information that the grower needs to compile at
11 the time of processing?

12 A. Yes.

13 Q. Is the information set forth in 991.55
14 intended to be provided to the -- if not provided to, at
15 least accessible to the committee?

16 A. Yes. There has to be a way to trace back
17 to make sure that what you are putting into the trade
18 does not go above your salable allotment.

19 Q. In Subsection (a) there is a reference to
20 October 15. Do you see that?

21 A. Yes.

22 Q. Was that intended to coincide with the
23 end of harvest?

24 A. Yes.

25 Q. Is the theory that these identification

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1 procedures are to be followed for each year's harvest?

2 A. Yes.

3 Q. And so the administrative committee in
4 its efforts to determine demand and supply has an idea
5 of what has actually been produced in a given year?

6 A. Yes.

7 ***

8 MR. MONAHAN: Your Honor, I believe I have
9 exhausted the questions I have for Mr. Gasseling with
10 respect to the provisions 991.53 through 58.

11 ***

12 BY ADMINISTRATIVE LAW JUDGE:

13 Q. Mr. Gasseling, with regard to 991.55(a),
14 is the identification to be done both on hops themselves
15 and on an inventory provided to the committee?

16 A. I don't quite -- when you say
17 inventory -- from a previous year or part of the current
18 year production?

19 Q. By October 15, do I need to identify my
20 year's production both on the hops themselves and in a
21 list that I provide to the committee?

22 A. I would envision that the requirement for
23 labeling of the original product will be a certain type
24 of requirement which would be identification by grower
25 year, variety, et cetera. I would also envision that

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1 there would be some kind of a form that would be
2 supplied by the committee that would allow the grower to
3 put that information in a form that could be utilized by
4 the committee and tracked so that subsequent handlers
5 would be able to sign off and be assured that they would
6 not ultimately purchase more product than the grower had
7 salable. The way it works in the mint operation, there
8 is a form where you start out with your salable for that
9 year, and as each individual handler acquires a portion
10 of that, they have to sign off on that portion as to how
11 much they took, and that information is forwarded onto
12 the committee, or to the committee office, to keep
13 records of it. But it also allows the handler to be
14 assured that they are not acquiring any product above
15 and beyond what the salable is. And once you hit to
16 zero, that is -- no more can be handled. So I think it
17 is going to take a little bit of work to customize it
18 specifically for the hop situation, but we have a pretty
19 good model of how the mint operation works, and I think
20 it can be adapted quite easily so that it makes the
21 burden as small as possible. Yes, there will be a
22 burden, but once the procedure is set and everybody
23 understands exactly how it works, it is not that
24 difficult. And I think that when we try to make it,
25 what we really do is make a mountain out of a molehill.

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1 It can be put in forms that are easy to work with and
2 easy to keep track of. And the one thing I think that I
3 have to say in addition to this, there is some concern
4 about confidentiality. I think if you read the
5 verification, the confidentiality part of it, it is
6 very, very evident that individual information is not
7 going to be available to the committee itself. It is
8 handled by employees or a third party, and they are
9 bound to keep this information confidential. So the
10 potential for committee members to be involved in some
11 individual's information, it just doesn't happen.

12 Q. And on what kind of form does the
13 committee inform the handling community of where the
14 salable is available -- if it does?

15 A. Well, what the committee -- I would
16 envision once the salable is set for that year, each
17 individual producer would be issued an allotment
18 certificate. An allotment certificate would show his
19 actual base allotment times the percentage salable, and
20 that would be his salable allotment for the year, and
21 that information would be given to each grower. And
22 then subsequent to that, a form would be given to an
23 individual grower, as I stated, so as product moved out,
24 it is kind of like a running balance scenario. The
25 first one signs off and it reduces the total, the second

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1 one signs off. It would be similar to what I think
2 Leslie Roy said about, you know, if you have the first
3 contract, and you were the first one to contract, your
4 amount would be deducted first, second, third, fourth,
5 fifth, and so forth. That information goes into the
6 committee office. I would imagine that the handler
7 would have to -- whoever the handler was would have to
8 know what your salable allotment for that year was when
9 they handled them to make sure that they did not handle
10 above that.

11 ***

12 ADMINISTRATIVE LAW JUDGE: Thank you. Let me
13 begin with questions from those who are in favor of the
14 marketing order. Mr. Monahan?

15 MR. MONAHAN: Your Honor's question brought up
16 an issue I would like to address with Mr. Gasseling.

17 ***

18 BY MR. MONAHAN:

19 Q. I am going to go back to 991.52, which is
20 the provision that, apparently, it certainly does need
21 some revision to accommodate our modified definition of
22 handle, but would just ask you to consider this
23 scenario. Obviously, a handler is not supposed to
24 purchase more than a grower's annual allotment.
25 Correct?

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1 A. Correct.

2 Q. What is to stop me, as a grower, from
3 going to John I. Haas with my certificate showing that I
4 have got 1,000 pounds of alpha to sell, selling them
5 1,000 pounds of alpha, and then going to S. S. Steiner
6 and showing them my certificate of allotment and selling
7 them 1,000 pounds of alpha?

8 A. Well, there is nothing to prevent you
9 from doing that, but how I would envision it working is
10 that you are going to have to supply that, whoever you
11 are selling to, a list of prior contracts. So if I go
12 to S. S. Steiner first and sell my total 1,000 pounds of
13 salable, they are going to ask, do I have any prior
14 contracts? And if I say, yeah, I have got a 1,000 pound
15 prior contract here, they are not going to buy them. If
16 I sell them to Steiner, and then go to Haas -- or let us
17 say I sell 500 pounds to Steiner, they would show no
18 previous contracts. And because this is the way it
19 works right now -- this is nothing different. This is
20 kind of first in line business, so you know what you are
21 going to get. All we are saying now is we are not going
22 to allow you to sell more than you can produce, is the
23 way it is right now, but we are also not going to allow
24 you to sell more than you are legally able to sell. So
25 you would have to, you know -- I would think if I were a

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1 dealer, I would want protection that I know where I am
2 at in this allotment scenario, so there would be prior
3 contracts as to how they would be filled.

4 Q. At least with respect to the handler who
5 purchases raw hops, does that handler have to report to
6 the committee the purchase of raw hops?

7 A. Well, yes, they would have to report it,
8 and then the calculation would have to be made so that
9 it reverts back to the alpha acid factor, because we are
10 selling salable as alpha, not the hops itself.

11 Q. I guess just from a basic enforcement
12 standpoint, if I am a grower with a 1,000 pound alpha
13 allotment, and I have gone and sold to two different
14 dealers, handlers, how is that going to come to the
15 attention of the committee or the Secretary if I had
16 exceeded my allotment?

17 A. Well, I think when you deliver -- I mean,
18 you could sell what you wanted to, but when you deliver,
19 you can only handle up to what your salable allotment
20 is. So once that certificate starts being reduced, at
21 some point you are going to hit zero. And if I have
22 oversold on the other side, it becomes first in line,
23 and that product, if there is excess product, goes into
24 the pool.

25 Q. I guess what I am trying to get at is

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1 from an enforcement standpoint, we heard from Mr.
2 Christiansen the other day that there have been
3 instances in which growers have sold or tried to sell
4 more than their annual allotment. Right?

5 A. Try to deliver more than their annual
6 allotment.

7 Q. Right. How does the committee or the
8 Department find out about that when it happens?

9 A. Well, I think in the mint thing, in some
10 cases it wasn't necessarily intentionally. It sometimes
11 happens that you take the product in, and when the
12 actual weight is done, or the actual -- in this case it
13 would be the calculation based on weight and the
14 factor -- it may be more than the actual salable, so
15 there has to be an adjustment.

16 Q. But how does the committee or the
17 Department find out that it is more?

18 A. Well, by the reporting. You have to
19 report that. There has to be a traceable way. As
20 product moves into the trade, it has to be accounted
21 for, and at some point, if you go past zero, somebody is
22 in violation. Now, that is not to say that somebody
23 couldn't figure out a way to circumvent it, but there
24 are severe penalties for doing that if it is done
25 intentionally. So you know, you can only set up a plan

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1 that addresses as much as possible, but if somebody is
2 really intent on trying to circumvent it, they may get
3 away with it for a while, but the problem is it takes
4 two to make that happen, and I cannot in my wildest
5 dreams imagine that somebody like S. S. Steiner, or John
6 I. Haas, or Yakima Chief, or any of these others would
7 intentionally try to do something like that with the
8 potential for the severe penalties. So I just don't
9 think that is really a major issue.

10 ***

11 MR. MONAHAN: Thank you, Mr. Gasseling.

12 ADMINISTRATIVE LAW JUDGE: Other questions for
13 Mr. Gasseling on these issues from those who are here in
14 favor of the marketing order?

15 MR. GASSELING: I might add under the old --
16 excuse me.

17 ADMINISTRATIVE LAW JUDGE: Please.

18 MR. GASSELING: Under the old order, there
19 were forms that you had to sign off on, the handler had
20 to sign off on, and those forms and that information was
21 forwarded to the committee. So how the exact forms will
22 be set up, I think that will be up to the committee, but
23 once the procedure is set, it is not that difficult to
24 keep track of this stuff; it really isn't.

25 MR. MONAHAN: Again, just to point your

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1 attention, and perhaps those who may be curious, to
2 991.52(b)(2), there is indeed a requirement for a
3 handler to notify the committee of the event of
4 handling. Is that right?

5 MR. GASSELING: Yes.

6 MR. MONAHAN: Thanks, Your Honor.

7 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
8 Monahan. Questions now from those who are here in a
9 position against the marketing order? Oh, we need to
10 change the tape at 12:03.

11 ***

12 [Off the record]

13 [On the record]

14 ***

15 ADMINISTRATIVE LAW JUDGE: We are back on
16 record at 12:04. Questions? Mr. Moody.

17 MR. MOODY: Thank you, Your Honor.

18 ***

19 BY MR. MOODY:

20 Q. Mr. Gasseling, just a couple preliminary
21 things and then we will go through some of your
22 sections, which I know you have described in thorough
23 detail, and I appreciate that. Have you made a decision
24 in your own mind how you are going to vote on this
25 federal order if it comes to a referendum?

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1 A. No.

2 Q. And so you haven't made any kind of a
3 commitment to anybody as to how you might vote if there
4 is a referendum?

5 A. No.

6 ***

7 MR. MOODY: I would like to mark something as
8 our next exhibit, Your Honor.

9 ADMINISTRATIVE LAW JUDGE: Yes. The next
10 number is 44. Thank you. Let us go off record while
11 these copies are distributed.

12 ***

13 [Off the record]

14 [On the record]

15 ***

16 ADMINISTRATIVE LAW JUDGE: I have marked as
17 Exhibit 44, a document entitled, Hop Producer Agreement
18 to Vote for Federal Hop Marketing Order. Mr. Moody.

19 MR. MOODY: All right.

20 ***

21 BY MR. MOODY:

22 Q. Mr. Gasseling, have you seen this
23 document before?

24 A. I think so.

25 Q. Okay. If you could describe the
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1 circumstances of how it came into being?

2 A. Well, there is actually two separate
3 parts to this. You have the first part that is Hop
4 Producer Agreement to Vote for a Federal Hop Marketing
5 Order, and then you have the agreement, the Washington
6 agreement which we talked about, the set aside program.
7 So they are two separate issues.

8 Q. This is the '02 set aside. Is that
9 correct?

10 A. Yes.

11 Q. Okay.

12 A. Yes. So it is a combination of two
13 agreements.

14 Q. Okay. And were you -- I think you were a
15 part of the Washington set aside committee at the time?

16 A. Yes.

17 Q. And were you in that capacity responsible
18 for coming up with this?

19 A. No, I wasn't responsible for this part.
20 I don't even remember, quite frankly, who actually came
21 up with this wording, but that wasn't my responsibility.

22 Q. Okay. Did you sign it?

23 A. I am not sure if I did or not. I might
24 have.

25 Q. Okay. And do you know who else on the
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1 Proponents Committee or what other of the proponents
2 have signed it?

3 ***

4 MR. MONAHAN: Your Honor, if I can just
5 register an objection/inquiry? If there is any signed
6 document out there that anyone is aware of, I would
7 encourage them to put it forward. The Proponents
8 Committee is not aware of any signed agreements.

9 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
10 Monahan. Nevertheless, I will allow Mr. Moody to
11 continue his examination. Do you remember the last
12 question, Mr. Gasseling?

13 MR. GASSELING: No. If you could ask it
14 again?

15 ***

16 BY MR. MOODY:

17 Q. That is okay, Tom. It was do you know
18 who in the Proponents Committee or what other proponents
19 have signed it?

20 A. I don't exactly -- all I know is that
21 there was a substantial number of growers who signed
22 these commitments, and the way I recall is that they
23 were tied to each other. If the set aside didn't go
24 through, from the Washington standpoint, then the other
25 agreement wasn't valid either. There was also a

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1 situation with regards to the other growing areas,
2 whereby they weren't involved in the Washington set
3 aside program, so that document had no bearing on their
4 situation whatsoever.

5 Q. Right, but as I read the commitment to
6 the federal marketing order, they could sign that one
7 separately. Is that correct?

8 A. Well, you know, you could, but the
9 problem is I don't think from a legal standpoint that it
10 could have ever been -- you could have ever monitored
11 that particular thing because the votes are in secret.

12 Q. Did you intend it to be binding and
13 enforceable?

14 ***

15 MR. MONAHAN: I object to the question, Your
16 Honor. This gentleman has already testified he played
17 no role in preparing this.

18 ADMINISTRATIVE LAW JUDGE: The objection is
19 sustained. If you would reword your question, Mr.
20 Moody?

21 ***

22 BY MR. MOODY:

23 Q. Was it your understanding, Mr. Gasseling,
24 that this document was to be mutually binding and
25 enforceable?

1
2 MR. MONAHAN: Again, for clarification, Your
3 Honor, Mr. Moody refers to this document. There appear
4 to be at least three documents within the...

5
6 BY MR. MOODY:

7 Q. Okay. I am now specifically referring to
8 just the document concerning the commitment to the
9 federal marketing order.

10 A. Myself, personally?

11 Q. Yes, sir.

12 A. I considered it to be an indication of
13 the support for a federal marketing order.

14 Q. Could I ask you to just take a brief look
15 and read to yourself paragraph 2, titled, Enforcement?

16
17 MR. MONAHAN: Your Honor, I am going to have
18 to object unless we have some foundation that this was
19 an actual document presented to growers for signature.
20 I would be happy to present some testimony on that issue
21 if you would like.

22 MR. MOODY: Your Honor, Mr. Gasseling just
23 testified he is aware there were a number of growers who
24 did sign it.

25 MR. GASSELING: Well, you know, I can't

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1 remember if this is the exact document, but there was a
2 document put out there asking for support of the federal
3 marketing order, also for the set aside program. I am
4 not sure if these are the exact documents. I am really
5 not. I don't remember exactly which one I signed or may
6 have signed, so I am just going on memory. This has
7 been a while.

8 ADMINISTRATIVE LAW JUDGE: Do you want to make
9 an offer of proof as to what later evidence will show,
10 Mr. Moody? If not, I will sustain the objection.

11 MR. MOODY: Yes. We will have witnesses later
12 on who will testify that they are aware of numerous
13 growers who did sign the federal commitment.

14 ADMINISTRATIVE LAW JUDGE: All right. And
15 that would be the first how many pages of Exhibit #44?

16 MR. MOODY: The first two, Your Honor.

17 ADMINISTRATIVE LAW JUDGE: The first two? All
18 right. Based on that, Mr. Monahan, I will allow the
19 witness to turn to paragraph 2 and read it to himself
20 and allow Mr. Moody to ask his next question when we
21 have had time for that.

22 ***

23 BY MR. MOODY:

24 Q. Why don't you go ahead and read it into
25 the record, if that would be quicker?

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ADMINISTRATIVE LAW JUDGE: No need. We have it. Assuming this will be admitted into evidence, we have it. I guess I don't know that yet. Go ahead and read it, if you will, Mr. Gasseling.

MR. GASSELING: Number 2?

ADMINISTRATIVE LAW JUDGE: Yes, please.

MR. GASSELING: Enforcement: To the extent not otherwise prohibited by law, this contractual commitment on the part of the undersigned producer shall be irrevocable and may be enforced under the laws in the state in which the producer resides. The undersigned producer hereby acknowledges and agrees that any other producer who has made a similar commitment and who has not breached that commitment shall have the right to enforce this commitment on the part of the undersigned producer and to seek, if applicable, specific performance of the undersigned producer's commitment set forth herein.

BY MR. MOODY:

Q. Thank you, Mr. Gasseling. From that language, is it your understanding that it was meant to be binding and enforceable on the people who signed it?

A. Well, I am not sure that this document

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1 ever was put out to the trade to be signed in this
2 fashion so, as I said before, I don't recall signing
3 this particular thing. It may -- you know, it may have
4 been a rough draft, it may have been a concept that was
5 discussed, but I am not sure that that was -- that that
6 ever was put out. The last one, the second part about
7 the set aside, it may not be exactly this, but I know I
8 signed on the set aside deal. But this first one, I
9 think may have well been just a rough draft and never
10 been put out to anybody.

11 Q. Well, where would we go to or who would
12 we talk to, to find out what the final language, if any,
13 was?

14 ***

15 ADMINISTRATIVE LAW JUDGE: Before you answer
16 that -- Mr. Moody, since the contractual commitment
17 includes a provision that the initial allotment base
18 shall be allocated separately for aroma hops and alpha
19 hops, does this document have any relevance at this
20 point?

21 MR. MOODY: Actually, it does. It has a
22 couple relevances. One is it is unclear whether that
23 paragraph would be treated as a whereas or a condition
24 precedent clause, number one. Number two, it certainly
25 goes to intent, goes to the issue of the fairness of

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1 these hearings, and I think it goes to whether or not
2 there really is any practical meaningful ability to vary
3 the base years from '97 through '01, for example, to
4 include '03. I mean, also, it is relevant because it
5 represents blatant vote buying. I think it kind of
6 generally taints the process under which these marketing
7 orders were formulated.

8 MR. GASSELING: Mr. Moody, can I respond to
9 that?

10 ADMINISTRATIVE LAW JUDGE: Just a minute. I
11 disagree with you, Mr. Moody. You can continue to put
12 on evidence about this, if you wish, but it appears to
13 me to be totally irrelevant to the process that is
14 before us now. Perhaps you may want to go into it
15 simply to let anyone who has signed this document become
16 aware that they are not bound by their signatures, but I
17 presume you will have other evidence of that at some
18 later point. At this point, I don't see spending a lot
19 of Mr. Gasseling's time on what you are raising as
20 issues.

21 MR. MOODY: Okay. I think the text speaks for
22 itself, and if Mr. Gasseling is able to point to a
23 different version of the document or can point me to
24 where I would go to get that, I would certainly want the
25 more accurate version if there is one.

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1 MS. DESKINS: Judge Clifton, I feel compelled
2 to speak about this. I mean, any document that people
3 have signed by the Hop Marketing Order -- there is no
4 Hop Marketing Order and the document wouldn't be binding
5 on the Federal Government, and the purpose of these
6 hearings would be to gather evidence to see if there is
7 a need for one and what form it would take. So I just
8 don't know how this would be relevant. As far as I
9 know, I think these proceedings have been fair to
10 everyone. I mean, Mr. Moody made a statement that these
11 proceedings aren't fair. Maybe he should state for the
12 record how they are unfair so that we can correct that
13 and have a fair process.

14 ADMINISTRATIVE LAW JUDGE: Mr. Moody, would
15 you like to respond?

16 MR. MOODY: Sure, Your Honor. If I can ask
17 Mr. Gasseling one kind of indirect question, first?

18 ADMINISTRATIVE LAW JUDGE: You may.

19 ***

20 BY MR. MOODY:

21 Q. Mr. Gasseling, were you part of the
22 delegations that went back to USDA to present the
23 Proponents Committee proposal?

24 A. Yes.

25 Q. And did you tell them you had signed up a
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1 number of growers who would vote in support of the
2 proposal?

3 A. No.

4 Q. You kept that a secret?

5 ***

6 ADMINISTRATIVE LAW JUDGE: Mr. Moody, there
7 has been no establishment of that, that Mr. Gasseling
8 had signed up a number of growers.

9 MR. MOODY: Okay. Let me address why I think
10 it does potentially affect the fairness of the Hearing.
11 One thing that happens at these hearings is that people
12 are educated as to the strengths and weaknesses of the
13 program, and certainly, there have been a number of
14 changes discussed and proposed here, and the Proponents
15 have made several changes in the program. And if
16 people, you know, honest, hardworking growers felt they
17 were committed to vote for it because of what they would
18 see at the Hearing, or read about it in the paper, or in
19 the recommended Decision, it might otherwise change
20 their mind if they still feel contractually bound, just
21 as a matter of honor, to go ahead and vote for it
22 because they had already made a prior commitment.

23 MR. GASSELING: Mr. Moody, I might be able to
24 clarify this. First of all, to quote an old hop grower,
25 my mind has a great ability to forget -- okay --

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1 sometimes. Looking this over...

2 MR. MOODY: As do I, Tom.

3 MR. GASSELING: Looking this over, we have to
4 go back to the process that was being developed. We
5 have a two-stage process. We had growers saying that
6 Washington had the problem, Washington needed to address
7 it. That is the set aside portion of this thing. It
8 was also the request that we try to implement some sort
9 of a federal marketing order. There was a draft made,
10 and this is the draft, of trying to get -- if we could
11 get growers to commit to the set aside program and the
12 federal marketing order, you know, they were tied
13 together. We found out that this -- we couldn't do
14 this. There was no way to do this, legally or any other
15 way, because votes are in private. A number of growers
16 said that if there were changes in there, they may or
17 may not want to grow, so this document was never put out
18 to be signed. And if somebody -- you know, if somebody
19 signed it, I don't know how they would have, because it
20 got stopped in its tracks because it really couldn't
21 force anybody to do anything.

22 MR. MOODY: All right. Well, Your Honor, I
23 think we have had enough -- I don't want to belabor the
24 point, but I would like to move this into evidence and
25 just make comments in the post hearing briefs on it if

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1 it continues to be relevant.

2 ADMINISTRATIVE LAW JUDGE: Yes. And in
3 addition to whatever you might want to argue in a brief,
4 I would state that no one who signed the document need
5 feel bound by it. It is not relevant to the marketing
6 order that is being considered here. Is there any
7 objection to the admission into evidence of Exhibit #44?

8 MR. MONAHAN: Yes, Your Honor. The Proponents
9 Committee objects.

10 ADMINISTRATIVE LAW JUDGE: Mr. Moody, you
11 indicated that there will be evidence later on of signed
12 copies of this. I will wait for your additional
13 evidence before I rule on your motion.

14 MR. MOODY: I don't know if we will be able in
15 one more day to get an actual signed copy, but I think
16 we can get some testimony that there are people who
17 signed a copy.

18 MR. GASSELING: May I just make another
19 comment, Your Honor?

20 ADMINISTRATIVE LAW JUDGE: Yes, Mr. Gasseling.

21 MR. GASSELING: If you read these contractual
22 commitments, this was made early in the process, and if
23 you refer to allotment base, how it is calculated, that
24 its aromas and alpha hops are separate, you know, this
25 was done early in the process and it never got past this

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1 point. And I would be really interested to know anybody
2 who signed this particular document. It was never put
3 out by the committee to be signed, to my knowledge.

4 ADMINISTRATIVE LAW JUDGE: Thank you. Mr.
5 Carswell.

6 ***

7 BY MR. CARSWELL:

8 Q. You have indicated that there is
9 something of this nature that was out there that you
10 believe was signed. Is that accurate?

11 A. The agreement to take hops out of
12 production?

13 Q. No. The agreement...

14 A. It was signed, yes.

15 Q. ...on the federal hop marketing order.

16 A. No. There was nothing out there that
17 bound somebody to have to vote for the federal marketing
18 order, to my knowledge.

19 Q. Okay. So if we are not able --
20 presumably, Opponents aren't going to have a copy of
21 this that is signed, because if they think consistent,
22 they never would have signed it. You know, it seems
23 like it is going to be impossible for us to get a signed
24 copy of this if it exists unless it is produced by the
25 Proponents. So I guess we are kind of stuck.

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1 A. Well, I am telling you, Mr. Carswell,
2 that we, as a committee, never put that document out to
3 be signed as a binding contract with anybody, to my
4 knowledge. This whole thing, we have to keep in mind,
5 was a work in progress, and the whole concept was to tie
6 the two issues together. It started in Hop Growers of
7 America, to not only address the immediate issue with
8 regards to reducing acreage and production, but also, to
9 put some kind of a mandatory program into effect into
10 the future.

11 Q. I just don't understand how this got out
12 in general circulation if it wasn't being, you know,
13 submitted for growers to sign but, you know, maybe you
14 could give us...

15 A. Well, there may have been copies out
16 there for people to look at. I mean, we put copies out
17 there, but that doesn't mean that anything was signed,
18 and there was a lot of discussion on whether or not this
19 was reasonable to even try to do something like that.
20 Growers said, you know, we are signing something we
21 don't even know, and plus, it is not even enforceable.
22 Because ultimately, the vote is in secret, and that by
23 itself squelches it. There is no way you could force
24 somebody to adhere to it on a secret vote.

25 Q. Well, maybe you couldn't enforce it, but

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1 I would think -- I would posit that it is relevant
2 because it indicates a desire to make these hearings,
3 frankly, meaningless, because if this was -- if the hop
4 marketing order was in the format that was described in
5 this, it certainly would mean that the hearings where we
6 are supposed to set forth evidence that makes people
7 change their minds, and as Leslie indicated yesterday,
8 he is still not sure where he is. And you know, if he
9 had signed this, and if it were still in effect, then he
10 would have had to vote -- to meet this contract, he
11 would have had to vote for the order.

12 A. He would not have had to...

13 ***

14 ADMINISTRATIVE LAW JUDGE: Let me stop you
15 all. Mr. Carswell, I will take that as argument, rather
16 than testimony. Before I call on you, Mr. Monahan, are
17 you a grower, sir?

18 MR. BRULOTTE: Yes.

19 ADMINISTRATIVE LAW JUDGE: Would you come to a
20 microphone, please? Would you identify yourself?

21 MR. BRULOTTE: My name is Ronald Brulotte,
22 R-o-n-a-l-d, B-r-u-l-o-t-t-e.

23 ADMINISTRATIVE LAW JUDGE: Are you related to
24 Reggie Brulotte?

25 MR. BRULOTTE: Yes.

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1 ADMINISTRATIVE LAW JUDGE: How?

2 MR. BRULOTTE: Father.

3 ADMINISTRATIVE LAW JUDGE: All right. Thank
4 you. Do you know -- have you seen a copy of this
5 Exhibit #44 that we are debating right now?

6 MR. BRULOTTE: Yes, I have.

7 ADMINISTRATIVE LAW JUDGE: All right. Did you
8 want to testify about that?

9 MR. BRULOTTE: Yes. I think that particular
10 document was presented to...

11 ADMINISTRATIVE LAW JUDGE: I am sorry. I
12 forgot to swear you in. Thank you, Ms. Deskins.

13 ***

14 [Witness sworn]

15 ***

16 RONALD BRULOTTE,
17 having first been duly sworn, according to the law,
18 testified as follows:

19 BY ADMINISTRATIVE LAW JUDGE:

20 Q. Thank you. Just to make sure the "I do"
21 was heard, would you say...

22 A. I do.

23 Q. Thank you.

24 A. Okay. That particular document, I think
25 was presented at a Hop Growers America annual meeting

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1 for discussion, and at that point in time, they were
2 looking to proceed working towards a proposal for the
3 marketing order. And I was not part of the set aside
4 program. I was not on the committee at that time. We
5 were about the middle of the pack on it and we could
6 have went either way with it, so we did not, you know,
7 pro or con on that particular issue. Having been on the
8 old marketing board, which I feel strongly for, I
9 offered to help on the new one to work on to where we
10 are today. That particular document is, like they say,
11 was binding on something they couldn't do, and I brought
12 that point up. I said the only way you can go out and
13 solicit votes, all you can do is set and motion to get
14 to where we are at today. Once that change was made,
15 that was what was sent out for signature.

16 Q. All right. So what was sent out for
17 signature did not include pages 1 and 2?

18 A. They were sent together somehow -- I
19 don't remember exactly. In fact, all the document was
20 that we agreed as a group to proceed to bring this thing
21 to a formal rulemaking today with the attitude and idea
22 that if there is a referendum, that each and every
23 person has his own vote and it is his own business.

24 ***

25 ADMINISTRATIVE LAW JUDGE: Thank you.

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1 Questions for Mr. Brulotte? Mr. Monahan, do you have
2 any?

3 MR. MONAHAN: We can't be on at the same time.

4 ADMINISTRATIVE LAW JUDGE: Oh, thank you.

5 MR. MONAHAN: Your Honor, I don't have any
6 questions. I would like to respond to some of the
7 comments that have been made on the record by counsel,
8 however.

9 ADMINISTRATIVE LAW JUDGE: All right. Excuse
10 me. Now I have lost my voice. Are there any questions
11 for Mr. Brulotte from anyone else? Mr. Carswell.

12 ***

13 BY MR. CARSWELL:

14 Q. Mr. Brulotte, it sounds like from your
15 testimony that there was a document related to the hop
16 marketing order that was sent out for signature?

17 A. The only document I looked at and signed
18 was one that said that we would continue to work in that
19 direction, at least as far as that part of the industry
20 that was interested in getting a formal rulemaking
21 process to where we are at today, probably at the
22 rulemaking proceedings to get us here today to at least
23 try and get this far with it and get it out for open
24 debate with the administration so we could quit this
25 fighting amongst ourselves.

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1
2 MR. CARSWELL: Thank you, sir. I would
3 request if we could get a copy of that document, that
4 would be great. Thank you.

5 ADMINISTRATIVE LAW JUDGE: Mr. Carswell, your
6 request is for a copy of the document that was sent out?

7 MR. CARSWELL: Yes, Your Honor.

8 ADMINISTRATIVE LAW JUDGE: All right. Is
9 there anyone here who would have such a copy? If you
10 think you would, if you would raise your hand? And Mr.
11 Brulotte, would you turn your mic off so that Mr.
12 Monahan can turn his on? Thanks.

13 MR. MONAHAN: Your Honor, I am going to hand
14 the microphone over to Mr. Carpenter, who is aware of
15 the background and the ultimate -- was it a written
16 document -- written document that was prepared.

17 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
18 Monahan.

19
20 STEPHEN CARPENTER,
21 having previously been duly sworn, according to the law,
22 testified as follows:

23 BY ADMINISTRATIVE LAW JUDGE:

24 Q. Mr. Carpenter, you remain sworn.

25 A. Thank you, Your Honor. Maybe I can shed
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1 some light on this particular document.

2 Q. I am sorry. I should again have you
3 state your full name, however.

4 A. Stephen Carpenter, S-t-e-p-h-e-n,
5 C-a-r-p-e-n-t-e-r. This particular document was
6 presented at the HGA convention in 2001, and it really
7 was a result of the production management team, which
8 was a taskforce sponsored by the HGA. This was part of
9 the recommendation of that committee. This particular
10 document, to my knowledge, was not signed by anybody in
11 the industry, nor was it sent out for signature. We
12 talked to several growers, including Mr. Brulotte, and
13 the decision was that, really, all we could do as a
14 committee was to see if there was support for the
15 formation of a Proponents Committee to look into terms
16 that we could agree on for a proposed order. And the
17 language in the document that went out is substantially
18 different than the language you see in this draft
19 agreement that was presented. I don't know if there is
20 any copies of this agreement even out there. I think we
21 sent these, if I recall correctly, into the Washington
22 State Department of Agriculture, and I believe for
23 confidentiality purposes that at least the originals
24 were all destroyed. Perhaps there is a signed copy out
25 there somewhere, but I am not sure I would know where to

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1 find it.

2 ***

3 ADMINISTRATIVE LAW JUDGE: Thank you.
4 Questions of Mr. Carpenter? Mr. Monahan, do you have
5 any?

6 MR. MONAHAN: Thanks, Your Honor.

7 ***

8 BY MR. MONAHAN:

9 Q. Mr. Carpenter, we will have to share the
10 same mic, I am afraid. Mr. Carpenter, did the
11 subsequent document that was prepared after the document
12 we were discussing -- did it contain any commitment or
13 promise to vote one way or the other in any type of
14 referendum?

15 A. No, it did not.

16 Q. Can you just describe in greater detail,
17 or as much detail as you can, what the substance of this
18 document was?

19 A. We had concern -- when we started talking
20 about the Washington set aside, there were several
21 growers at our meetings who expressed a concern that
22 they would be laying acreage idle for the 2002 crop, and
23 we would not proceed with the formation of a Proponents
24 Committee to look into developing some proposed terms
25 for a marketing order. So they felt comfortable with

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1 the language in this document, stating that we would at
2 least form a Proponents Committee and start another
3 round of industry input into gathering information on
4 developing a proposed order. But there was no attempt
5 on anybody's part to bind their vote or bind their
6 support for a marketing order.

7 ***

8 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
9 Carpenter. Are there questions for Mr. Carpenter? Mr.
10 Moody.

11 MR. MOODY: Yes, Your Honor. Thank you.

12 ***

13 BY MR. MOODY:

14 Q. And thank you for the explanation. Do
15 you have your own copy of that document or one you can
16 obtain, you know, and represent that it is signed? I
17 think it is okay to black out the actual signature on
18 it, that you could provide for the record?

19 A. I certainly don't have one with me, Mr.
20 Moody. I am not sure that I would even have one in my
21 files, but I would be happy to look this evening.

22 ***

23 MR. MOODY: Okay. Thank you very much. And
24 Brendan, I don't know if your firm was involved that
25 long ago in this process -- maybe not -- but maybe your

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1 office may have a copy as well?

2 MR. MONAHAN: Wouldn't that be privileged,
3 Jim? The Proponents Committee will...

4 MR. MOODY: Not if it was generally sent out
5 to the hops industry, no. Okay. Your Honor, I think we
6 have kind of, you know, covered this enough. I just
7 hope somebody can come up with what was supposedly,
8 finally, sent out and signed, and I would like them both
9 to be made a part of the record at that time.

10 ADMINISTRATIVE LAW JUDGE: Yes. I am very
11 curious about what evidence you would have presented on
12 this issue, but we will get to that later. Other
13 questions for Mr. Gasseling on the provisions that he
14 has covered? Mr. Monahan.

15 MR. MONAHAN: Well, Your Honor, I leave it to
16 Your Honor as to whether a response is warranted. I am
17 concerned...

18 ADMINISTRATIVE LAW JUDGE: Oh, I am sorry. I
19 forgot all about that. Yes. Mr. Monahan, you may
20 respond.

21 MR. MONAHAN: Yes, Your Honor. It is real
22 concerning and upsetting to Proponents Committee to hear
23 terms like "blatant vote buying" that Mr. Moody uses, to
24 hear suggestions of a tainted proceeding, to hear Mr.
25 Carswell suggest that the Opponents would be unable to

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1 find these signed documents that we now know were never
2 signed, suggestions that there has been some type of
3 underhanded manipulation on the part of Proponents. I
4 would be more than happy to have a candid debate about
5 any tainting of these proceedings or any intimidation.
6 I think there are some issues that probably should come
7 out in the open. I think it denigrates the proceedings,
8 however, to bring it up in this manner; especially, when
9 there is no evidence to support it. I want to make that
10 statement for the record. I think it is important for
11 the people who are here to hear and I would hope that in
12 the future there not be statements, remarks, like that
13 unless there is actual evidence to support it.

14 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
15 Monahan. Mr. Carswell.

16 MR. CARSWELL: Yes, Your Honor. What I said
17 was, if this document were sent out for signatures, they
18 would be in the hands -- the signed copies would be in
19 the hands of Proponents because Opponents wouldn't have
20 signed it. And I didn't suggest in any way, didn't mean
21 to, that Proponents wouldn't produce it. I was just
22 saying if it were out there, it would be in their hands.

23 ADMINISTRATIVE LAW JUDGE: Mr. Moody.

24 MR. MOODY: Thank you, Brendan. When I used
25 the term "vote buying" it was kind of a shorthand term

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1 for -- not that I am suggesting a briefcase full of cash
2 changed hands or anything, but that is what we will get
3 into with some questions to Mr. Gasseling, the way the
4 initial base is going to be handed out, they are going
5 to be producers who aren't producing anything that will
6 be entitled to base that could be worth, potentially,
7 millions of dollars, and that that commitment to include
8 that provision in the marketing order obtained their
9 vote, then it is certainly a helpful inducement to get
10 them to agree to vote in favor of it.

11 MR. MONAHAN: Perhaps we can swear Mr. Moody
12 as a witness.

13 ADMINISTRATIVE LAW JUDGE: Well, it doesn't
14 appear Mr. Moody had firsthand knowledge with regard to
15 this whole process. He is relying on someone else that
16 I assume will be testifying. Is that correct, Mr.
17 Moody?

18 MR. MOODY: Yes.

19 ADMINISTRATIVE LAW JUDGE: All right. Mr.
20 Gasseling -- any further questions for Mr. Gasseling
21 with regard to the provisions?

22 MR. GASSELING: Your Honor, could I say one
23 thing about this last hour that we have spent here, I
24 think, or 45 minutes?

25 ADMINISTRATIVE LAW JUDGE: You may.

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1 MR. GASSELING: I am a grower. I was asked to
2 serve on this committee. I started out in opposition.
3 I changed my mind. I have worked hard on this thing.
4 And I think that for the record, it should be stated
5 that the committee, whether we went back to Washington,
6 D.C., whether we met with the growers, we were
7 absolutely 100 percent candid. We didn't hide anything
8 from the Department when we met with them back there.
9 We were very open. We have been very open as a
10 committee with everybody here, including the opponents.
11 And I just want to go on the record to state that it
12 somewhat bothers me that somebody is out there trying to
13 infer that we have had all these secrets. I know in my
14 case, I have talked with dealer representatives, I have
15 talked with opponent representatives, I have talked with
16 brewery representatives open and freely about this
17 process, about what is going on, about how we see it
18 going forward, and if there is anybody out there -- I
19 would dare to say there could be nobody out there that
20 could come forward and say that I was operating in some
21 kind of a secret manner and mislead anybody on any part
22 of this document.

23 ADMINISTRATIVE LAW JUDGE: Mr. Moody.

24 MR. MOODY: Okay. I guess I would, you know,
25 defer to Your Honor and to Mr. Gasseling, if he wants to

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1 start on the meat and potatoes of these provisions now
2 or have a lunch break?

3 ADMINISTRATIVE LAW JUDGE: Let me see. I have
4 lost my appetite. Let us go for a little longer. Does
5 anyone else have any questions for Mr. Gasseling? Yes,
6 Dr. Tweeten.

7 ***

8 BY MR. TWEETEN:

9 Q. Can you hear me?

10 A. Yes.

11 Q. Mr. Gasseling, you replied, yes, I
12 believe, to Mr. Monahan's statement to the fact that
13 five hop buyers account for 90 percent of the hop
14 purchases. Is that correct?

15 A. Well, I did a calculation myself, and I
16 said that if I calculated up what I figure each one
17 handles, and based on testimony that has been given
18 here, the top four could handle 90 percent or above by
19 themselves.

20 Q. I don't know the validity or lack of
21 validity of that particular number.

22 A. Well, Dr. Tweeten, Steiner referred to 25
23 to 30 percent; AB has said they have 16 percent; Yakima
24 Chief has alluded to 25 to 30 percent. I think Haas is
25 probably in the 25 percent range. If I add those up, I

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1 come up over 90 percent. So even if I just take what
2 has been testified to with the exception of Haas, and I
3 am guessing there, but I think I have got a pretty good
4 idea -- that is how I arrived at it.

5 Q. So is it your interpretation that if
6 there is this high a proportion of the crop going to
7 these buyers, that means there is a need for a marketing
8 order to establish counter balancing market power? It gets
9 at the intent of those numbers.

10 A. Well, I was just asked what I thought
11 were the percentages handled by those dealers. There
12 wasn't any other -- I didn't understand any other reason
13 than to verify what I thought those people handled.

14 Q. Is it your view that hop growers would
15 get a higher price if there were less concentration in
16 the buying sector? And if there were a marketing order?

17 A. I think if there were more buyers, there
18 would be more competition.

19 Q. Isn't it possible that because these
20 buyers can be large operations, such as Anheuser Busch,
21 for example, that they can advertise more and innovate
22 more because they have the capacity to do so, and hence,
23 the prices might be higher and quantities of sales
24 larger for hops because of the size of those operations?

25 A. Well, I guess I put Anheuser Busch kind

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1 of in a different category than the others because
2 throughout this whole process, throughout this
3 oversupply situation, Anheuser Busch has been very fair
4 in how they have contracted, how they have treated the
5 growers, compared to the market. And in fact, I would
6 venture to say that -- and I have said this in other
7 arenas, I have said it to Mr. Busch himself, they are
8 carrying much of the burden on their backs because they
9 are paying relative to what the rest of the market is, a
10 very, very fair price. Our problem is to try to address
11 the other side so that there is some kind of balance.
12 In fact, Anheuser Busch, by their actions, puts
13 themselves at a disadvantage in the marketplace because
14 they are willing to pay this high price when the other
15 players pay a much lower price. So I have to put that
16 kind of in a different context. Now, if you want to
17 talk about the rest of the market and what would affect
18 that, there is no question if there were more players,
19 if you take Coors and Anheuser Busch out of it and you
20 look at what is left, if there were more players there
21 would be much more competition for the business.

22 Q. One of the stated purposes of the
23 marketing order is stabilization. An extremely
24 important portion of that would appear to be
25 inventories; that is, to be able to respond to shocks

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1 that arise that often cannot be foreseen that make a
2 difference between what is produced, what is marketed,
3 and what is demanded. Inventories are a way to deal
4 with that. Correct?

5 A. Yes.

6 Q. How would our inventory set in this
7 marketing order?

8 A. They are not set.

9 Q. Isn't that a terribly important failure
10 of this marketing order provision?

11 A. I don't look at it that way, because I
12 think a more important aspect of it is what is the
13 inventory.

14 Q. And what is to assure that there are
15 inventories to be able to respond to the shocks to the
16 marketing system with this marketing order?

17 A. Well, there is no more assurance that you
18 are going to respond to a crop failure with or without a
19 marketing order. You have the potential depending on
20 what the circumstances are on both sides, but I don't
21 think that the intent of the marketing order is to try
22 to -- or non-marketing order situations, to try to guess
23 that there is going to be a crop failure in crop year
24 2003.

25 Q. But isn't it likely that the marketing

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1 provisions of this order will distort private
2 individuals, private stockholders' judgments of what is
3 an appropriate amount of inventory to hold to meet the
4 shocks to the market?

5 A. I think just the reverse. As I said
6 earlier, if I had more information, personally, as a
7 relatively middle sized grower, as to what actual
8 numbers were inventory numbers, other things, that would
9 give me a better understanding of the overall market. I
10 have the ability under this system, if I think that I
11 want to make sure that in the event there is an
12 unforeseen disaster, and I want to make sure that if
13 there is I can participate in it, I have the ability to
14 put product in the pool. And if there is a disaster,
15 that product can be made available for that particular
16 reason, so I have avenues under that to make a decision
17 on my own just how much I want to put weight in
18 something like that happening.

19 Q. Wouldn't more information...

20 ***

21 ADMINISTRATIVE LAW JUDGE: Dr. Tweeten, we
22 have to change...

23 ***

24 [Off the record]

25 [On the record]

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ADMINISTRATIVE LAW JUDGE: We are back on
record at 12:51. Dr. Tweeten.

4

5

BY MR. TWEETEN:

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Q. One last question. Wouldn't more
information with the conventional marketing system be
helpful in the same way but without the distortions that
come about not knowing what the marketing allowances are
going to be from year to year?

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A. See, I believe the information that I get
right now is flawed tremendously. It is not correct,
because there is no mandatory reporting of a lot of this
information. So you can report or you don't have to
report. You can report one year, you don't have to
report the next year. So when we look at all of these
numbers, and I as an individual grower have to look at
that and try to assess is that correct or isn't it, it
is very difficult -- versus if I know -- let us take
acreage, for instance. If I know what the actual
acreage is and I know it to be true, I can take that,
and if I know what the alpha acids are, I can take those
numbers as truth and make my decisions based on
relatively solid information. Right now, the
information that I am able to obtain is at best flawed,

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1 and I know that for a fact. So the way we operate right
2 now, I am at a disadvantage because not only do I -- the
3 information I have, that it is flawed. I don't have
4 access to information that other people -- and I have
5 no -- it is not their fault. They just happen to be
6 bigger, better, more informed, have the ability, the
7 access that I don't have. So I have to get as much
8 information as possible and that information has to be
9 as accurate as possible. So that is why I see this as a
10 better system than what we operate right now under.

11 Q. So you would agree that we very much need
12 better market information?

13 A. I think we need more accurate market
14 information and maybe more.

15 ***

16 MR. TWEETEN: Thank you.

17 ADMINISTRATIVE LAW JUDGE: Thank you, Dr.
18 Tweeten. Mr. Moody.

19 MR. MOODY: Thank you.

20 ***

21 BY MR. MOODY:

22 Q. Mr. Gasseling, I didn't quite get the
23 dates that you left Haas and started your own farm
24 relative to the end of the old marketing order.

25 A. You want to know when I left John I.

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1 Haas?

2 Q. Did you leave Haas to start your own hop
3 farm?

4 A. No.

5 Q. Well, when approximately did you start
6 your own hop farm?

7 A. I didn't.

8 Q. Did you buy one or how did you come into
9 owning one?

10 A. My family has a hop farm.

11 Q. Okay. You came into management of it at
12 some point?

13 A. Yes.

14 Q. Okay.

15 A. A part of the management.

16 Q. Okay. And approximately what time was
17 that?

18 A. Actual being involved in the day-to-day
19 operations, probably, in 1997.

20 Q. Okay. Pretty recently. All right. I
21 think you testified, too, that you had expanded some
22 recently?

23 A. Yes.

24 Q. Was that acres -- expansion by acres or
25 by planting higher yielding varieties?

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1 A. Both.

2 Q. And what information informed you that it
3 was time to expand, in light of the fact there is all
4 this talk about burdensome oversupply and such?

5 A. Most of the expansion came in the aroma
6 side and those were in the form of contracts.

7 Q. Okay. And you agreed with the general
8 thrust of the testimony that aromas had been in balance
9 and the oversupply problem was on the alpha side?

10 A. They were, but I think there are some
11 aromas right now that are not in balance.

12 Q. Are alphas -- I don't know if it was Mr.
13 Smith or Mr. Carpenter, but one of the gentlemen
14 testified that he thought that alphas had come into
15 balance now. Would you agree with that?

16 A. Two weeks ago, I would have said yes.
17 Right now, I think they are more in balance, but for
18 whatever reasons, I don't know the market activity with
19 regards to the spot market has become pretty quiet.

20 Q. Okay. So the primary information you
21 used to expand, recently anyway, was your ability to
22 obtain contracts for aroma -- is that a fair
23 characterization?

24 A. On the aroma side, it was. Changing
25 varieties is a decision that I look at based on what

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1 varieties were growing, what markets they have, what is
2 the potential for sale, what is the yield potential,
3 what is the alpha production potential, all of those
4 things.

5 Q. All right. And I think you said that
6 there were some people in the industry that had better
7 information. You had two criticisms, if I understand
8 you, about information. One is that what is there is
9 inaccurate or can't be trusted, and two is that there
10 are some people in the industry have better access to
11 information than you do. Is that -- are both of those
12 correct?

13 A. Yes.

14 Q. Okay. Is the kind of information you are
15 believing can't be trusted the sort of information we
16 have been talking about here at the hearing, the Barth
17 report, the Hop Steiner report, the USDA statistics, HGA
18 data -- is that the type of information you are
19 referring to?

20 A. I am referring to acreage reports, as an
21 example. I don't think they are accurate.

22 Q. Okay. But the other statistics we have
23 talked about at the hearing, you believe those are
24 generally accurate, with the exception of the acreage?

25 A. Well, I would have to -- you know, before
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1 I give that a blanket statement, I would have to -- you
2 would have to go over everyone of them, but there are
3 some statistics that I have a pretty good idea how they
4 are compiled and they are relatively accurate.

5 Q. Okay. And the acreage is the focus of
6 your criticism?

7 A. It is one of the criticisms.

8 Q. Okay. And that is important because it
9 informs you as to what the supply will be?

10 A. Yes.

11 Q. Now, did you work through in preparing
12 for the proposal -- did you work through any kind of a
13 scenario for how you set the salable for one of the
14 recent seasons given the data that was available?

15 A. No.

16 Q. Any particular reason?

17 A. Well, in my estimation, it served no real
18 purpose to do so. We didn't have the information
19 available. In my estimation, I didn't push it because I
20 didn't think we had the information available to make
21 any kind of a valid calculation. And secondly, it
22 really makes no difference what I might think it should
23 be or what it will be. Our job and task was to put
24 together a plan that would give the overview of how the
25 committee would establish that, and that information, or

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1 that potential, ultimately, is going to lie within the
2 committee. And so it really -- hindsight is -- it
3 doesn't really make any difference to me and isn't
4 really of value as far as trying to calculate what it
5 would have been.

6 Q. Okay. And the only reason I ask the
7 question, and I asked a couple other witnesses about
8 this, too, Mr. Gasseling, is at a couple of the
9 promulgation hearings I have been at, Proponent
10 witnesses usually called on have testified as to
11 detailed scenarios showing revenue projections and, you
12 know, all that fancy economic stuff like you ask to show
13 how the order would have worked had it been in place to
14 show what its benefits would have been. And that
15 sometimes -- USDA's view seems to be helpful to
16 analyzing the merits of the proposal.

17 A. We are working on a pretty slim budget
18 over here, so we don't have the ability to...

19 Q. Okay. Fair enough. You said some people
20 in the industry had -- your second criticism other than
21 unreliability of some data -- your second criticism was
22 that some people in the industry had access to better
23 data than you do, and therefore, arguably, could make
24 better decisions. Could you give an example of that?

25 A. Brewery contact, sales being made to
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1 breweries, inquiries, you know, that whole side of it.

2 Q. Okay. But what kind of entity or
3 entities in the industry, or your competitors, or
4 dealers, or whoever, is in possession of that
5 information?

6 A. I think the dealers definitely have a lot
7 more of that information than I have.

8 Q. Okay. So then to the extent a dealer who
9 happens to also be a producer can make expansion or
10 contraction decisions based on this better information,
11 and if they are a competitor with you, you are concerned
12 that that negatively affects you?

13 A. Yes.

14 Q. Okay. How would the committee determine
15 the brewery demand for hops worldwide?

16 A. Well, I don't know how the committee
17 would do it, but I think you would be able to look at --
18 if you had inventory levels, you had production levels,
19 you had information from a number of these trade
20 reports, you could put together the information in a
21 form that would kind of give you an idea of where that
22 demand was, how much it was. But you know, it is not an
23 exact science, but if you had the ability to collect the
24 data from all of those different sources, I think you
25 would come up with a pretty close estimate of what that

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1 would be.

2 Q. Okay. So you, basically, use trade data,
3 perhaps survey data, and that would be, I guess, the
4 primary inputs in determining the salable?

5 A. It is one of the -- just from my
6 standpoint, it would be one of the inputs, you know.
7 Inventory is a big issue. Production is a big issue by
8 variety, whether it is aroma, alpha -- all of those
9 things would have to be taken into account.

10 Q. Okay. So demand would actually have to
11 be done not just as beer; it would have to be done
12 actually by variety, each variety of hops?

13 A. Well, you calculate, you know -- you
14 would calculate the amount of -- you get an idea of the
15 amount of beer production, have an idea of how much
16 alpha acid is necessary for that -- to meet that demand,
17 and do calculations to calculate, you know, how much
18 really needs to be out there. There are estimates out
19 there right now in publications that give what they
20 consider to be the production side and what they
21 consider to be the demand side, and the committee would
22 have to look at all of those and make a determination of
23 what they felt comfortable with, and use that in their
24 calculations.

25 Q. Okay. If the worldwide demand for beer

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1 was 10 million barrels, how many pounds of alpha acid
2 would that require?

3 A. I don't know.

4 Q. How would you figure that out?

5 A. If I were going to make an estimate?

6 Q. Yes.

7 A. I guess I would have to come up with a
8 hopping rate, what I would consider to be an overall
9 estimate of the hopping rate, and then do the math to
10 calculate what that would calculate back into
11 production.

12 Q. Well, how would you figure out how many
13 of those ten million barrels needed aroma hops and how
14 many needed alpha hops?

15 A. Well, you would have to do some
16 estimating. There is no question about that. But you
17 know how many -- you have a pretty good idea of how many
18 aroma hops are produced, you have a pretty good idea of
19 how many high alpha hops are produced, what the alpha
20 units are in the categories.

21 ***

22 MR. MONAHAN: Your Honor -- and Mr. Moody, I
23 don't mean to artificially dictate where you stop in
24 your cross examination, but I would remind the Court,
25 Your Honor, that we are at 1:00. I do have two growers

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1 who are hoping to go on early afternoon, and to the
2 extent we could accommodate their schedules, it would be
3 appreciated.

4 ADMINISTRATIVE LAW JUDGE: All right. What
5 would you estimate remains for Mr. Gasseling to cover on
6 direct examination?

7 MR. MOODY: Direct or cross, Your Honor?

8 ADMINISTRATIVE LAW JUDGE: I am asking Mr.
9 Monahan.

10 MR. MONAHAN: Direct, not more than 20
11 minutes, Your Honor.

12 ADMINISTRATIVE LAW JUDGE: Okay. Because he
13 is going to go back and cover some of the other
14 provisions?

15 MR. MONAHAN: He is going to go back and talk
16 about administrative committee provisions.

17 ADMINISTRATIVE LAW JUDGE: All right.

18 MR. MONAHAN: Those were addressed originally
19 by Mr. Neuhaus. Then we sort of had a piecemeal
20 rebuttal and we would just like to recover a little bit
21 of ground.

22 ADMINISTRATIVE LAW JUDGE: All right. I am
23 also eager not to hold Mr. Gasseling too long. I am
24 very aware that the growers who have been here as
25 Proponents Committee have been stuck in these

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1 proceedings for a week-and-a-half by the time we finish
2 tomorrow, while it is a very busy part of their
3 production cycle, and I appreciate the sacrifice they
4 have made. I would like to try to get Mr. Gasseling out
5 as soon as possible, but I do think we should interrupt
6 for those two growers who probably will not be very
7 lengthy. I do anticipate the continued cross
8 examination of Mr. Gasseling probably will be lengthy.
9 So it is a good time to break for lunch.

10 MR. MONAHAN: Thank you, Your Honor.

11 ADMINISTRATIVE LAW JUDGE: All right. Then
12 when we come back -- Mr. Moody, remember where you are
13 because I am going to interrupt you, and we will have
14 the two growers, and then you may resume your cross
15 examination of Mr. Gasseling after that is completed.

16 MR. MOODY: Thank you, Brendan. Mr. Gasseling
17 and Your Honor, thank you.

18 ADMINISTRATIVE LAW JUDGE: You are welcome,
19 Mr. Moody. Please be back at 2:10.

20 ***

21 {Recess}

22 ***

23 ADMINISTRATIVE LAW JUDGE: All right. We are
24 back on record; it is now 2:12. Mr. Monahan, I would
25 like to talk a little bit about our schedule for the

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1 remainder of the day. It dawned on my after we spoke of
2 the two growers that will be testifying, that I would
3 also like Mr. Annen to testify today since he is only
4 available until 10:00 tomorrow morning. I anticipate
5 his testimony would also be lengthy. So after Mr.
6 Gasseling's testimony is completed, would it be possible
7 for us then to call Mr. Annen?

8 MR. MONAHAN: Absolutely, Your Honor. And
9 just to give -- I realize we are now into the final
10 stages in terms of time -- after Mr. Gasseling finishes,
11 the only substantive testimony to be offered by the
12 Proponents is really going to be in the form of rebuttal
13 testimony. I have a list of growers who, in theory, we
14 could probably parade up for a day or two. I don't
15 think that is in the best interest of anybody's time and
16 probably one could argue would be cumulative as well. I
17 know that the Opponents are anxious to have their
18 growers testify. I think the main point of these
19 proceedings is to have as many voices from as many
20 growers as possible. I guess that is a long way of
21 saying we would like to reserve two hours for rebuttal,
22 I guess, at the end of the day tomorrow, and all the
23 time other than Mr. Gasseling's cross could be dedicated
24 to growers.

25 ADMINISTRATIVE LAW JUDGE: All right. I would
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1 encourage you to have as many of your growers who are in
2 favor of the order speak. It is all right that it is
3 cumulative; particularly, in that there is such a
4 question over which years should be used in the
5 calculation of base and there may be differing opinions
6 as to that. There may be differing opinions as to some
7 of the other items that have been highlighted. And I
8 think each grower who speaks has a way of teaching us
9 something that we could take into consideration, even if
10 it is some of the same concerns from a different
11 viewpoint.

12 MR. MONAHAN: Your Honor, I didn't mean to try
13 to stifle or limit any grower who wants to stand up for
14 or against. I simply wish to report that a number of
15 growers have contacted the committee, declared
16 themselves available if so called. We do not want to
17 artificially extend these already protracted hearings by
18 that type of presentation. That is all I am saying,
19 Your Honor.

20 ADMINISTRATIVE LAW JUDGE: All right. Very
21 good. All right. Then which grower should testify
22 first -- if you would come forward?

23 MR. MONAHAN: Your Honor, if Gary Morford is
24 here, I believe he was intending to testify.

25 ADMINISTRATIVE LAW JUDGE: Very good.

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1 MR. MONAHAN: Mr. Morford has provided me with
2 a stack of copies of a prepared statement, which I will
3 hand around now.

4 ADMINISTRATIVE LAW JUDGE: Thank you. I will
5 mark Mr. Morford's statement at Exhibit #45. If there
6 is an extra for the Court reporter, he can send that
7 ahead to the typist, and then I will give him the record
8 copy.

9 MR. MONAHAN: Thank you, Your Honor.

10 ADMINISTRATIVE LAW JUDGE: Mr. Morford, would
11 you state and spell your name for the record?

12 MR. MORFORD: Gary, G-a-r-y, J. Morford,
13 M-o-r-f-o-r-d.

14 ADMINISTRATIVE LAW JUDGE: All right. I
15 wanted to make sure the people in the back can hear him
16 clearly. He is a ways back from the microphone. If you
17 could hear him clearly, please raise your hand. Okay.
18 Good. Mr. Morford, would you like to give us a little
19 background about your connection with the hops industry,
20 where you farm, how long you have been involved with it,
21 whether you were involved with the prior hops marketing
22 order, and that kind of information for us?

23 MR. MORFORD: Do you want to swear me in?

24 ADMINISTRATIVE LAW JUDGE: Yes, I do.

25 MR. MORFORD: I have been here almost a week-
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1 and-a-half so I have seen your process.

2 ADMINISTRATIVE LAW JUDGE: And I see, also,
3 your statement includes a lot of that information, so
4 you may want to cover it in your statement. Thank you
5 so much. Would you raise your right hand, please?

6 ***

7 [Witness sworn]

8 ***

9 GARY J. MORFORD,
10 having first been duly sworn, according to the law,
11 testified as follows:

12 BY ADMINISTRATIVE LAW JUDGE:

13 Q. Thank you. You may proceed.

14 A. I just wrote this statement this morning.
15 It won't take very long. My name is Gary J. Morford,
16 co-owner of Green Acre Farms, Inc., graduated from
17 Washington State University with a degree in agriculture
18 mechanization. During my time at WSU, I took many ag
19 econ classes, including Dr. Fawell's Ag Econ 450 class,
20 but I didn't do quite as well as Mr. Smith. I am also a
21 fourth generation hop farmer, I found out from Leslie
22 yesterday, since we are cousins. I came back from
23 college to start farming with my dad in 1978, so my
24 experience with the old hop marketing order is limited.
25 I was surprised to hear in Oregon from Paul Forbert when

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1 he was on the stand that his father and grandfather
2 farmed 200 acres of hops for 30 to 40 years, never
3 changing the amount of acreage. Yet, today, Mr. Forbert
4 is farming 115 acres, a significant drop. When the
5 order came out in the '60s, my dad was farming under 200
6 acres of hops, and by the end of the order, in '86, he
7 was farming just under 1,000 acres. He probably was one
8 of the largest buyers of base during the marketing order
9 years. He was never really for the order, although, he
10 did take full advantage of opportunities that were
11 available. He was one of the few that played the spot
12 market continuously and came out ahead. Since the end
13 of the marketing order, Green Acres Farms has grown in
14 the fruit industry as well as in the hops. During the
15 marketing order years, hops comprised 100 percent of our
16 business, but today, they comprise just 40 percent.
17 During the last ten years, I have seen many changes in
18 Green Acre Farms and our industry in variety as well as
19 sales opportunities. Whereas this hop market used to
20 have both highs and lows, not taking into account the
21 fires of 2000, the highs are not very high or
22 consistent, and the lows are very low and very
23 consistent. Contrary to what some people may believe,
24 as a large hop grower, I prefer to have as many growers
25 in our industry as possible. The market situation is

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1 always helped by more sales. Today, a select few
2 growers set the market each year at a low price. I hear
3 some growers indicate that they are efficient farmers,
4 but it appears that they are waiting for other growers
5 to go out of business, as if that was the only option
6 for them to survive. I have been involved for the last
7 two years to the full extent in the set aside program,
8 as Mr. Roy indicated previously, but I have stayed out
9 of this current marketing order process because of
10 noncompliance of other growers to be mandated and my own
11 "leave us alone" attitude. Up to two months ago, I
12 probably would have voted against this order without
13 reading it, but after listening to the testimony from
14 the Oregon growers and breweries, and observed how this
15 process works, I am throwing my support to the marketing
16 order. I ask the USDA committee to give a chance to the
17 growers to vote and to finish this process. Also, I
18 would like to see one vote/one farm be implemented. As
19 a larger grower, we have one vote as well. Green Acre
20 Farms has not broken into smaller entities so that we
21 could have stronger voting power. I had thought that I
22 was the only one with this philosophy, but I was pleased
23 to find that Mr. Roy shares this same view. If the USDA
24 can spend this much time and money leading into the
25 option to vote, I would like to see them spend equal

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1 time investigating each operation to implement the one
2 vote/one farm policy. Thank you to the USDA Board and
3 the Judge for giving me the opportunity to voice my
4 opinion.

5 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
6 Morford. I would like you to sign the record copy, and
7 you can either use that one or the one I have if you
8 want to keep that one. Thank you. Is there any
9 objection to the admission into evidence of Exhibit #45?
10 There is none. Exhibit #45 is hereby admitted into
11 evidence. I would now invite questions for Mr. Morford,
12 beginning with those who are here appearing in a
13 position in favor of the marketing order.

14 MR. MONAHAN: There are no questions from the
15 Proponents Committee, Your Honor.

16 ADMINISTRATIVE LAW JUDGE: Thank you. Now,
17 from anyone who is here in a position against the
18 marketing order. Mr. Moody.

19 MR. MOODY: Thank you.

20 ***

21 BY MR. MOODY:

22 Q. Mr. Morford, I know since you have been
23 here, you have probably noticed -- are you also part
24 French?

25 A. Yes, I am.

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1 Q. Okay. Thanks.

2 A. I am related with a lot of them in the
3 room here.

4 Q. The weddings out here must be big fun.

5 A. The only time we get together besides
6 hearings.

7 Q. Just a couple quick questions. Maybe
8 from your experience with your father, maybe if you can,
9 compare the relative merits of participating in the spot
10 market versus the contract market?

11 A. During those years, my dad did play the
12 spot market quite a bit and was kind of an outsider to
13 the marketing order since he was kind of on that side of
14 the street where the -- was the market each year
15 depending on what he raised. I am sorry he can't be
16 here. He passed away this last March and we missed a
17 good man in this industry.

18 Q. Are most of your hops now on the contract
19 market?

20 A. Not most of them.

21 Q. You have some of each?

22 A. Right, about half.

23 Q. Okay. And have you been expanding or
24 contracting recently?

25 A. I think in the statement I said we
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1 expanded both in the fruit and in the hops since the end
2 of the marketing order.

3 Q. Oh. And you refer to a significant drop
4 in your hop acreage, took down to 115 acres?

5 A. No. That was Paul Forbert, when he
6 mentioned that under testimony down in Oregon.

7 Q. Oh.

8 A. I was surprised that he was so against it
9 when for 30-40 years, at least he was consistent. And
10 since the order has been gone, he has dropped down to
11 115 acres.

12 Q. All right. And on your operation, your
13 hop operation, have you been growing bigger or smaller
14 recently?

15 A. The last expansion was in '97.

16 Q. And...

17 A. And since then, we have probably had
18 years of declining because of the -- the last few years
19 when they had set aside programs and stuff.

20 Q. Okay. And you participated in the
21 alliance program in '01 and a set aside in '02?

22 A. I didn't have anything in the alliance,
23 but I was at the meetings and stuff.

24 Q. Okay. You did do the set aside in '02?

25 A. Yes. Also, in '01, as well. I am one of

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1 the three that Mr. Roy indicated tried to lead the
2 industry, but I guess we kind of missed even how much we
3 should have had laid out, because oversupply then even
4 added that year.

5 Q. Did you know that under the proposal,
6 they are going to calculate your base on the basis of
7 the highest production year, from '97 to '02?

8 A. I have heard that.

9 Q. And if you did that number, would that be
10 higher or lower than if they decided to use just '03
11 production?

12 A. I haven't looked at my numbers that
13 close, but I am willing to find base if I have to.

14 Q. So you wouldn't mind if you had to buy
15 some base?

16 A. That is right.

17 Q. Do you think the market is, relatively
18 speaking, in balance now?

19 A. I was impressed with Mr. Smith's graphs
20 and stuff, showing the 2003 crop down in Oregon, showing
21 that 2.4 million metric tons in the U.S., and putting
22 the numbers together, I think with the European
23 situation, the drought, I think Mr. Smith's idea of six-
24 eight months down the road, it could be in balance. But
25 we don't have a good statistic number on our alphas, and

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1 I believe our alphas are lower in the States this year.

2 Q. Okay. Assuming that the vote -- if there
3 is a vote -- could take place sometime during '04, do
4 you think it is best for USDA to use the producers who
5 were producers during '03 as the valid voters?

6 A. I think the grower that should be checked
7 with the USDA would make that decision if they were a
8 grower during 2003.

9 Q. Do you think that should be a
10 requirement, to be a bona fide grower during 2003 --
11 USDA would verify that?

12 A. That would be just my opinion. I
13 don't -- I have not thought about that situation because
14 I am farming in 2003, so I would -- my vote would count.
15 If they took it 2002, I farmed in 2002.

16 ***

17 MR. MOODY: Okay. Thanks very much, Mr.
18 Morford.

19 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
20 Moody. Mr. Carswell.

21 MR. CARSWELL: Thank you, Your Honor.

22 ***

23 BY MR. CARSWELL:

24 Q. I thought I was going to have to ask you
25 about whether you were a small grower or a large grower,

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1 but I see Dr. Hinman has made it back in so I will let
2 him.

3 A. I am ready for that one.

4 Q. I just wanted to ask you a couple of
5 questions about whether you have seen any increase in
6 the direct selling to brewers in the industry or if you,
7 personally -- if your farm has done any direct sales to
8 brewers?

9 A. As of right now, we have no direct sales
10 to any breweries, including Anheuser Busch, even though
11 I am probably one of the largest Willamette growers in
12 the States. My Willamettes go through dealers and end
13 up -- hopefully, end up in Anheuser Busch's hands.

14 Q. I hope so, too. Have you seen in the
15 industry any increase in direct sales to brewers where,
16 perhaps, the dealers are really just performing a
17 service function of palletizing and extracting?

18 A. They are doing a lot of processing for
19 me, so they are important to me as well for that act. I
20 do a lot of palletizing and extracting.

21 Q. And you do that in the context of
22 selling -- you are actually selling to them. Right?

23 A. I am selling extract and then it is just
24 a different form between the raw form by powder by kilos
25 of extract.

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1 Q. But you are not selling direct to
2 brewers...

3 A. No.

4 Q. ...where they are just performing that
5 function?

6 A. No.

7 Q. But have you heard of any development of
8 that type of a business model, let us call it, or
9 transaction, where they are really just performing that
10 service, but the relationship is direct with the brewer?

11 A. Are you asking that a brewer has asked me
12 or...

13 Q. No, sir. I was just wondering if you
14 heard in the industry of situations where now the
15 Steiner's and the Haas' of the world are not buying the
16 hops from the grower but, rather, they are -- the
17 purchase is made by the brewer and the dealer is really
18 just performing a service for the grower and/or the
19 brewer of doing the palletizing and extracting?

20 A. Then you are asking if selling to a
21 dealer -- to a brewery direct?

22 Q. Yes, sir.

23 A. And I...

24 Q. No, I know you are not, but I am just
25 wondering if in the industry are you seeing an increase

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1 in direct sales to brewers other than Anheuser Busch?

2 A. As a large grower, I get asked yearly
3 about selling direct to a brewery around the world, and
4 I have stayed away and used middle people for that
5 reason of not getting involved outside direct to outside
6 countries.

7 Q. But you have been approached about
8 selling direct?

9 A. Yes.

10 ***

11 MR. CARSWELL: Okay. Thank you, sir.

12 ADMINISTRATIVE LAW JUDGE: Are there other
13 questions for Mr. Morford? Dr. Hinman. I am sorry --
14 Dr. Tweeten.

15 MR. TWEETEN: Thank you, Your Honor.

16 ***

17 BY MR. TWEETEN:

18 Q. You are aware, I am sure, that
19 industries, enterprises, other than hops have highs and
20 lows, economically?

21 A. I am fully aware of that.

22 Q. The lows in the hops industry in recent
23 years from an economic standpoint, do you feel they are
24 more the result of changing technology in the system or
25 a free market system that has failed?

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1
2 MR. MONAHAN: I would object to the form of
3 the question, to the extent it supposes those are the
4 only two options.

5
6 BY MR. TWEETEN:

7 Q. Of those two, which accounts in your mind
8 for the difficulties experienced economically in the
9 hops industry?

10
11 ADMINISTRATIVE LAW JUDGE: You can rely on
12 your economics class...

13 MR. MORFORD: 101 -- No, it was 450, but I
14 also mentioned I didn't do very good at it.

15 ADMINISTRATIVE LAW JUDGE: And if you believe
16 you need to explain your answer or say that neither of
17 those accounts for it in your opinion, you are welcome
18 to.

19 MR. MORFORD: Yeah. I would sit down and
20 think on that one. I am sorry I couldn't give you a
21 better answer than that.

22
23 BY MR. TWEETEN:

24 Q. So I guess I can imply from your answer
25 that you are not blaming the market system for the

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1 economic difficulties of hop growers?

2 A. No. I don't say it is not to blame. I
3 think there are many problems and they need to be
4 addressed separately, and I like to think things out
5 before I answer, and I don't know if we have all
6 afternoon to sit here and watch me.

7 Q. I will just ask one more question then.
8 Do you think a market order would be any improvement
9 over the current market system for the hop industry?

10 A. I was against it from the first bringing
11 this out, but what I have seen, and the growers'
12 reactions to circumstances, if we don't have a change in
13 the marketing society as we see it, in five years, if
14 there is another hearing, I don't think you will have a
15 handful in this room, and that is what is sad.

16 ***

17 MR. TWEETEN: Thank you.

18 ADMINISTRATIVE LAW JUDGE: Thank you, Dr.
19 Tweeten. Any other questions from those who are here in
20 a position against the marketing order? There are none.
21 Now, from neutral individuals, beginning with USDA
22 representatives? Dr. Hinman.

23 ***

24 BY MR. HINMAN:

25 Q. It sounds like you are already ready for

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1 this question.

2 A. I am, sir.

3 Q. So go ahead and state your...

4 A. I am a large grower.

5 Q. A large grower. Where is the acreage and
6 about how many acres is it?

7 A. I don't think that is real important.

8 Q. Okay.

9 A. In excess of 1,000.

10 ***

11 MR. HINMAN: Thank you.

12 ADMINISTRATIVE LAW JUDGE: Is the location of
13 the acreage...

14 MR. MORFORD: No. It is all here in Yakima
15 Valley.

16 ADMINISTRATIVE LAW JUDGE: Thank you. Are
17 there any other questions from USDA representatives?
18 Are there any other questions from anyone else? Mr.
19 Morford, is there anything you would like to add before
20 you step down?

21 MR. MORFORD: No, Judge. Just I have enjoyed
22 watching this process, and also, how you controlled
23 everything except for, I guess, last night was very
24 long. I wasn't around for that. I have since being
25 back here in Yakima, I haven't attended as many meetings

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1 as I did down in Oregon.

2 ADMINISTRATIVE LAW JUDGE: We may go long
3 again tonight.

4 MR. MORFORD: Well, I am just about ready to
5 leave so...

6 ADMINISTRATIVE LAW JUDGE: Thank you.

7 MR. MORFORD: Thank you.

8 ADMINISTRATIVE LAW JUDGE: And Mr. Serres, if
9 you would come forward? All right. Then let us change
10 the tape at 2:38.

11 ***

12 [Off the record]

13 [On the record]

14 ***

15 ADMINISTRATIVE LAW JUDGE: All right. We are
16 back on record at 2:39. Mr. Serres, I had spelled your
17 name entirely wrong. Would you state and spell your
18 name for the record, please?

19 MR. SERRES: Certainly. Paul, P-a-u-l,
20 Serres, S-e-r-r-e-s.

21 ADMINISTRATIVE LAW JUDGE: Thank you. Would
22 you raise your right hand, please?

23 ***

24 [Witness sworn]

25 ***

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1 PAUL J. SERRES,
2 having first been duly sworn, according to the law,
3 testified as follows:

4 BY ADMINISTRATIVE LAW JUDGE:

5 Q. Thank you. Mr. Serres, I have marked
6 your statement as Exhibit #46, and you may have already
7 given us the background about your connection with hops.
8 If you feel you have not, if you would acquaint us with
9 that before you read your statement into the record?

10 A. Yes, Your Honor. Well, actually, my
11 background in hops is pretty much described in the first
12 paragraph.

13 Q. All right. You may proceed.

14 A. All right. Thank you, Your Honor. As a
15 matter of introduction, my name is Paul Serres. I am an
16 Oregon hop grower, living and producing hops in
17 Woodburn, Oregon. Our family has grown hops
18 continuously the past 64 years, 39 of which I have been
19 directly involved...

20 ***

21 MR. MONAHAN: Your Honor, we may have skipped
22 the oath.

23 ADMINISTRATIVE LAW JUDGE: No. I did it.

24 MR. MONAHAN: Oh. I must have been handing
25 out copies. I am sorry.

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1 ADMINISTRATIVE LAW JUDGE: Yes. You know,
2 that is so -- and I really appreciate your help -- and
3 that is so easy to overlook, but I was just trained.

4 MR. SERRES: Our family farm gradually grew to
5 a size of 775 acres in the late '80s and remained that
6 size until the mid '90s. At that time, new varieties,
7 called the super high alpha varieties, were being
8 planted in the State of Washington, and I and other
9 Oregon growers were no longer competitive in the
10 production of alpha acid. The new varieties, which
11 yielded not only more production in pounds, also had an
12 increase in the percent of alpha acid. These varieties
13 were not public varieties. They were proprietary in
14 nature and were not designed to grow in the Willamette
15 Valley. Recognizing these facts and watching Washington
16 growers scramble to convert their acreage to the new
17 higher yielding varieties was a turning point in my
18 career. Burning equity to maintain market share has
19 never been appealing to me. It was time to adjust. We
20 reduced our acreage, changed some of our varieties, and
21 did not try to produce what was not needed. Today, I am
22 a very small growing entity, producing only about 100
23 acres of aroma hops. In addition to raising hops, we
24 also grow grass for seed and run a manufacturing
25 business which provides parts and machinery to the hop

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1 growing industry. My purpose today is to establish for
2 the record my concern for the future of the U.S. hops
3 industry. In my opinion, the industry is in deep
4 trouble. First, I must say that I am here as a
5 Proponent for the proposed federal marketing order, and
6 I feel the industry as a whole will be far better off
7 operating with, rather than without, a federal marketing
8 order. I come here today not armed with an elaborate
9 PowerPoint presentation, nor papers filled with
10 statistics. I am sure those things have already been
11 provided and are already part of the record. I am here
12 as a grower with a lifetime of experience, having
13 operated both under the guidelines of the last federal
14 marketing order and ever since its demise without one.
15 It is a matter of record that during the last federal
16 marketing order there was a small gradual increase in
17 seasonal average price to growers for 15 years in a row,
18 and during this same time, the industry was never
19 shorted a product. I think that is a pretty remarkable
20 record and not many other parts of agriculture can say
21 that. There was a time when hop growers seemed to have
22 control of their destiny and actually were the envy of
23 all agriculture. That certainly is not true today. In
24 my opinion, the previous federal marketing order added
25 stability to the industry and functioned well until its

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1 last year or two when it fell apart and was probably
2 mis-run due to personal greed. I was gradually able to
3 increase the size of my operation by renting a
4 purchasing quota necessary to market hops during that
5 time. Today, we are faced with a new and different
6 problem, different problems than the industry faced
7 during the last federal marketing order. With improved
8 production capacity per acre, more efficient processing
9 equipment, including the harvest equipment and the
10 downstream products, we simply do not need the acreage
11 base to satisfy the existing demand. Simply put, we
12 have excess capacity to produce, and that combined with
13 the mentality that no one wants to downsize or lose
14 market share, has resulted in the dilemma that we are
15 caught in today. A federal marketing order really would
16 not have prevented many of the problems which we are
17 trying to solve and deal with today, nor will a federal
18 marketing order provide any form of quick to the dilemma
19 the industry is caught in. Time and economics will
20 resolve our current situation. In my opinion, the
21 greatest strength, the thing that a federal marketing
22 order could offer, is to provide long-term stability to
23 the industry by providing an orderly controlled
24 expansion when the market cycle turns around. Most of
25 us are not fond of regulation, and actually, I get fed

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1 up with over regulation, but I also recognize the need
2 for regulation. Because of human greed, often times
3 things get out of balance, and then short-term greed
4 results in tragedy, sometimes the destruction of the
5 commons. I suggest you might read sometime "The Tragedy
6 of the Commons" by Garrett Hardin, 1968. The solution
7 to the industry's problems seems apparent and simple.
8 The problem is there is no equitable way to achieve
9 them. In my opinion, the following needs to be done:
10 (1) Reduce acreage to bring production in line with
11 consumption; (2) Place any surplus or excess production
12 in a reserve pool, which if not needed during that
13 market year, it is applied to the following year's
14 contract, and acreage reduced by a corresponding amount;
15 (3) Reduce the number of growing entities so that the
16 remaining entities are operating at 90 to 100 percent
17 capacity. This will allow those entities to provide the
18 end user with a cost effective product. We cannot
19 expect to run all of these facilities at 40 to 50
20 percent with high fixed costs and expect the end user to
21 buy a product with excess cost built into it. (4)
22 Return profit to production. The aroma segment of the
23 market has maintained a reasonable balance between the
24 available supply and demand, which is reflected in fair
25 priced contracts between brewers and growers. The alpha

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1 segment of the market has been greatly overproduced,
2 resulting in surplus inventory, depressed prices, and
3 the need to cut or regulate production. I am sure that
4 some brewers and merchants have expressed concern
5 regarding volume control and its possible effect on
6 price. It is not the intent of the proposed federal
7 marketing order to ever short the industry of supply,
8 but simply to bring production and consumption in closer
9 balance. Regulating 26 percent of the world crop will
10 have little effect on price and we must also always
11 remain competitive in the world market. I believe a
12 federal marketing order is a tool, which and if properly
13 operated, can solve some of the above problems and
14 provide future stability to the industry. It is too
15 late in my career to make a lot of difference to me,
16 personally, but for the future generations and the
17 future of the hop industry, I feel both would be better
18 served with a federal marketing order in place. Thank
19 you for your time and consideration.

20 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
21 Serres. I would invite questions first by those who are
22 here in a position in favor of the marketing order.

23 ***

24 BY MR. MONAHAN:

25 Q. Good afternoon, Mr. Serres. My name is
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1 Brendan Monahan. I am an attorney with the Proponents
2 Committee. Thank you for making the trip to Yakima. We
3 heard from some growers in Oregon and we appreciate you
4 making the trip up here.

5 A. Well, I apologize. I was quite ill last
6 week and unable to attend the Hearing, so I apologize
7 about not being there.

8 Q. Can you give us an idea, sir, of how
9 large the hop growing community is in the State of
10 Oregon -- how many growers, how many participants?

11 A. Well, I will try to address that. There
12 is probably -- if you want to use grower numbers, maybe
13 somewhere in the area of 35 or 38, and I will use
14 families, if you will, because many families are
15 splintered with various identities. There are probably
16 20-21 families and they are comprising maybe 35-38
17 growing entities.

18 Q. Does the industry in Oregon have any type
19 of regular or at least annual meetings?

20 A. The group meets fairly regular.

21 Q. Can you describe how and in what context
22 the group meets?

23 A. Well, in several ways. We have different
24 types of organizations. There is the Oregon Commission,
25 for example, which meets on a regular basis. There is

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1 the Oregon Hop Growers Association, which meets on a
2 scheduled basis, and they also have a few social
3 functions every year, so it is pretty common to have
4 meetings in Oregon.

5 Q. We have heard the Washington industry
6 referred to as a tightknit grower community. Is that
7 true of Oregon?

8 A. Well, I think that is true, yes.

9 Q. Would you consider yourself an active
10 participant in the Oregon industry, sir?

11 A. I have been very active my entire career.
12 I probably got a little less active the last year or so.

13 Q. Can you describe -- there has been some
14 testimony, and it was in Oregon so I will have to make a
15 representation to you. There has been testimony that
16 there were trips made by members of the Proponents
17 Committee to Oregon to address with Oregon growers the
18 provisions of the proposed order. Were you aware of
19 those when they occurred?

20 A. Well, I have been aware of them and I
21 have attended them.

22 Q. Okay. Can you describe how those
23 meetings went or what type of presentation was made by
24 the Proponents Committee?

25 A. I will attempt. My recollection is

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1 this -- this process goes back about two years, and at
2 the onset, I would say that the majority of the Oregon
3 growers had very little interest in a federal marketing
4 order. And the Proponents Committee, the group up here,
5 I think went way out of their way, not one time but
6 several times, to come to Oregon to explain, to answer
7 questions, to discuss, to see what the concerns were,
8 address why there was any opposition, if you will, and
9 over a period of time, I think we as a group of people
10 in Oregon went from very few people in favor of a
11 federal marketing order to, actually, crossed a majority
12 at a point maybe a year ago or a little less than a year
13 ago, that probably 55 or 60 percent of the people, if
14 you had a straw vote or actually had some votes, were in
15 favor of a marketing order at that time. But the group
16 has become -- slipped the other way somewhat in recent
17 times and I think part of that is -- I don't know if I
18 should use the word "intimidation" or not, but since a
19 couple of the large dealers and some of the larger
20 breweries have publicly expressed their opposition to
21 the marketing order, many people that formerly were in
22 favor have become quite quiet. I don't know -- I guess
23 they don't want to jeopardize any relationships, and I
24 understand that.

25 Q. We heard a number from Mr. Annen, who I

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1 think we will talk to later today, about a vote or some
2 indication that 35 out of the 38 grower numbers in
3 Oregon were now opposed to the marketing order. Do you,
4 sir, as a member of the Oregon growing community, agree
5 with that or disagree with that?

6 A. Well, I haven't taken a vote, or tally,
7 or asked anyone recently, so I can't honestly answer
8 that. I can say this -- as of a few months ago, or four
9 months ago, something like that, four or five months
10 ago, I hand carried a petition around to see whether
11 people would sign a petition in favor of it or not, and
12 I certainly had more signatures on the one petition that
13 I carried at that time. Now, it may have slipped to
14 less than that at the present time, but as of a few
15 months ago, there was quite a few people in support of
16 the federal marketing order in Oregon.

17 Q. And you used the word "silent" in
18 response to some concerns by the growing community that
19 has resulted in their silence. In your estimation, does
20 silence equate to opposition? Or do you know?

21 A. No, I wouldn't call silence opposition.
22 I think it is just a lack of not wanting to make any
23 waves, if you will. I think they want to appear
24 neutral, if you will. I don't know that they actually
25 are neutral, but I think this is a lot of people's

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1 livelihood and they want to be very careful, very
2 diplomatic, if you will, of what they say. Maybe I
3 shouldn't be saying what I am, but I am just
4 straightforward, you know, and I respect the people I do
5 business with. I respect them to have different
6 opinions than I have. In my dealings with the brewers
7 that I sell to are first class, and we may not share the
8 same opinions on things, but business-wise, we have a
9 good relationship.

10 ***

11 MR. MONAHAN: Thank you for your time, Mr.
12 Serres.

13 ADMINISTRATIVE LAW JUDGE: I have marked Mr.
14 Serres' statement as Exhibit #46, and it is on
15 letterhead of Back Acre Hop Farms, Inc. Is there any
16 objection to Exhibit #46 being admitted into evidence?
17 There is none. Exhibit #46 is hereby admitted into
18 evidence. Other questions for Mr. Serres from those who
19 are here in a position against the marketing order? Mr.
20 Moody.

21 MR. MOODY: Thank you.

22 ***

23 BY MR. MOODY:

24 Q. Mr. Serres, are you primarily an aroma or
25 an alpha grower?

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1 A. At the moment, aroma only. I formerly
2 grew a variety called Nugget, which is an alpha hop.
3 But when the super high alphas came into production, I
4 don't know if you are familiar with the geographic area
5 of Oregon or not, but we have quite a lot of rain, we
6 have mildew, especially, downy mildew. The varieties
7 that were originally introduced as the super highs did
8 not do well in Oregon, and I and other Oregon growers,
9 all of us, lost our competitive advantage to grow
10 generic alpha production, so I dropped out of the alpha
11 producing arena and grow only aroma hops.

12 Q. That seems very prudent. Do you also
13 have other non-hop farming interests?

14 A. Yeah. I switched a large part of my
15 acreage of hops into grass for seed production.

16 Q. And are you -- is the market for aroma
17 now presently in balance, in your view?

18 A. I would say it is in relatively close
19 balance. I think it is still oversupplied a bit. I
20 think there is plenty surplus hops available, but it is
21 managed reasonably well. It is not -- if it weren't for
22 the crop shortage in Europe, I don't think the alpha
23 market would be close to alignment at all, and if
24 everybody has a normal crop next year, will not be then
25 either. I think that the people purchasing aroma hops

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1 have done a better job of managing supply. Certainly,
2 they want a cushion, if you will, or an inventory to
3 carry, but I think it is in reasonable balance.

4 Q. Have you been expanding your acreage
5 since '97 for hops or reducing your acreage since '97?

6 A. I have reduced it somewhat.

7 Q. So you don't think if the order went into
8 effect you would need to buy any base?

9 A. No.

10 Q. In figuring out how much base you should
11 be entitled to, do you think that USDA should use the
12 '97 to '02 period or some other period, such as the '03
13 production?

14 A. I have no problem with the '97 to '02. I
15 don't need the '03.

16 Q. And what about determining your right to
17 vote as a producer? Should it be limited to people who
18 were producers in '03?

19 A. I have to think on that a second. I was
20 a producer in '03, but I have to think if there was some
21 particular reason why an individual grower who maybe
22 historically has grown a long time, didn't grow for some
23 reason, that maybe they should be allowed to vote. If
24 somebody has grown for 25 years and there was some
25 particular reason they didn't grow one year, I don't

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1 know. The committee would have to look at that. But
2 for the most part, I guess you have to continue growing
3 to be eligible to vote.

4 Q. All right. I think you mentioned that
5 the solution wasn't simple -- the solution is simple but
6 there is no equitable way. Did I hear that right?

7 A. Correct.

8 Q. Now, what did you mean by no equitable
9 way?

10 A. Well, I don't know how well you
11 understand the nature of hop farming. What is going on
12 is this. Hop farmers don't function as normal business
13 people do. Well, we are small business people, but to
14 us, the monetary investment is significant. People have
15 over years or decades with their harvest facilities, and
16 their trellis, and their land, and their equipment, have
17 a substantial investment. And that equipment is unique;
18 it serves no other purpose. The hop cutter does one
19 thing; it cuts hops. The hop drier maybe has one other
20 small use. For the most part, all of the equipment is
21 designed to do one specific thing. So people tend to
22 stay in business long after a rational business person
23 would have sold the farm or done something different,
24 trying to hang in there, and it is kind of like a
25 disease. And so this prolongs itself. My point is, you

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1 know, we need to vote somebody off the island. Instead
2 of 60 growing entities, we need about 40 growing
3 entities, but there is no easy way to decide who goes
4 except the pure economics. Does that answer your
5 question?

6 Q. Okay. I think if I understood you --
7 that was a good analogy -- but I think the industry
8 needs an exit strategy to get some people out of the
9 industry, extra people out of the industry?

10 A. Well, there is no exit strategy. That is
11 part of the problem. An exit strategy might make it a
12 little simpler.

13 Q. But what was the no equitable way part --
14 what was that -- there is no equitable way to pick who
15 gets kicked off the island?

16 A. No. I am sure economics will take care
17 of it. It is like any other business. The economics --
18 I mentioned in my comments that if the marketing order
19 doesn't resolve this problem, time and economics will,
20 and it is well along its way. We just need a little
21 more time and that will be dealt with, because I
22 honestly believe we have to run these facilities to
23 capacity. It is nice in thought, as Gary said, and I
24 respect his comments, that it would be nice if we had
25 more growing entities, but that is just not the way

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1 things are done today. I don't care whether it is Wal-
2 Mart or whether it is any other business. Every
3 business is becoming fewer and larger players. That is
4 going to continue in this business as it does in the
5 brewing industry or anything else. We have to run large
6 efficient operations.

7 Q. So basically, you think the industry
8 needs to continue to become more productive and more
9 efficient?

10 A. Amen.

11 Q. I think you said that the aroma people
12 were in balance but the alpha people were still out of
13 whack?

14 A. I believe that.

15 Q. Was that...

16 ***

17 ADMINISTRATIVE LAW JUDGE: He said, I believe
18 that.

19 ***

20 BY MR. MOODY:

21 Q. Would you know the bait out?

22 A. Well, I don't know how to describe this.
23 From my perspective, I think part of what happened was
24 this. When the super high alpha varieties came out, and
25 you can't take away what has been improved or designed.

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1 It is there and it is going to stay there, and that is
2 good and bad. But basically, for the end user, that is
3 good. You don't have to be really smart to realize if
4 you have a variety that yields two-and-a-quarter, the
5 amount of alpha per acre growing is not going to take as
6 many acres, and so the industry has to contract. It is
7 that simple. We need less entities, less acres, to
8 produce the needed supply for the demand. And people
9 quickly wanted to change, and the thing got
10 overproduced, trying to be one of the survivors, if you
11 will.

12 ***

13 MR. MOODY: Okay. Thank you very much, Mr.
14 Serres.

15 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
16 Moody. Mr. Carswell.

17 ***

18 BY MR. CARSWELL:

19 Q. Hi, Mr. Serres. Matt Carswell. I see
20 here that you were -- the size of your farm was 775
21 acres until the mid '90s. I guess you were somewhere
22 around that in '97, or what was your acreage in '97, if
23 you don't mind saying?

24 A. It was less than that.

25 Q. Less than that?

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1 A. Yes.

2 Q. But somewhere above 100. Right?

3 A. Yes.

4 Q. And so you have gone down to where you
5 are currently producing 100, so if you are going to be a
6 net, you are going to have some extra base on your hands
7 under the scenario that has been set up for the HMO. Is
8 that right?

9 A. Most likely.

10 Q. And I just notice on page 3, that you say
11 in the third paragraph from the bottom, or the fourth if
12 you count the one line that you conclude with -- in that
13 paragraph you say that regulating 26 percent of the
14 world crop will have little affect on price, and we must
15 remain competitive in the world market. So you don't
16 see this as having much affect on price. Right?

17 A. If a federal marketing order goes in, it
18 would stabilize the industry, we will have maybe a more
19 consistent supply, and maybe a slight increase in grower
20 price. I believe a lot of equity has been eroded away
21 from many of these farms over a period of time. We are
22 not going to get the equity back, but at some point in
23 time, I think a fair or better price needs to be paid.
24 It cannot ever become out of line or out of competition
25 with other sources or merchants and breweries will

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1 simply buy from other sources.

2 Q. Yes, sir. And because we only have 26
3 percent of the world crop, we are not going to be able
4 to affect the price very much, is what your statement
5 says?

6 A. Somewhat, but very little. I think very
7 little.

8 Q. Imagine a farmer that is kind of the
9 reverse of you in terms of the production, where, you
10 know, he has been expanding rapidly since the mid '90s.

11 A. I feel sorry for him -- go ahead.

12 Q. Yes, sir. I do, too, because he is going
13 to have to buy a lot of base, isn't he, if there is a
14 drastic cut in the salable quantity. Is that right?

15 A. Well, most likely, yes.

16 Q. Yes, sir. And with that added cost, do
17 you think he is going to be able to compete when there
18 is not going to be much affect on price?

19 A. That depends on the price of the base he
20 has to acquire. It may be very inexpensive.

21 Q. Yes, sir.

22 A. I may have some to part with.

23 Q. It sounds like you will.

24 A. But it all comes down to the value of the
25 business. I have chosen to, basically, exit the

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1 industry because it is a poor business deal, and there
2 is life after hops.

3 Q. Yes, sir. You also mentioned, I believe,
4 that economics is currently kind of shaking out the
5 industry, in effect.

6 A. It has, yes.

7 Q. Yes, sir.

8 A. And it is continuing.

9 Q. Yes, sir. And the marketing order will
10 just help that process along. Is that...

11 A. No, I am not indicating that at all.

12 Q. Okay.

13 A. I said that time and economics will
14 straighten out the crisis we are in. The only value I
15 see to a marketing order has nothing to do with fixing
16 our situation or helping it.

17 Q. Okay.

18 A. Once -- whomever survives the ordeal we
19 are going through, and once profitability returns, or
20 the market cycle changes, what will happen without an
21 order is this. We have such tremendous excess capacity
22 to produce -- there are machines sitting around
23 everywhere. There is land, there is trellis, expertise.
24 It will be slam-dunked so fast, as soon as there is a
25 ray of hope, that it will be ten years to pay with a

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1 surplus that is building, too, and it will repeat itself
2 over and over. The one advantage of the federal
3 marketing order is if we control the expansion so we
4 have a reasonable price and a reasonable control on the
5 volume, then it may be stability and consistency to the
6 market for whomever is in it at the time.

7 Q. And I guess, if somebody has to buy a lot
8 of base because they have expanded, and presuming that
9 there is a substantial cost to acquiring base, that may
10 affect whether they are a survivor. Wouldn't it?

11 A. You make a good point, that is true, but
12 in the last order -- let us go back to 1965. I just
13 graduated from school and I was starting, and I was
14 able -- I was not gifted any allotment, if you will, and
15 I started my own entity. Gradually do that, and was
16 able to do that through the purchase of base, because
17 there was enough profitability in growing hops to either
18 rent it or to acquire the base. But see, there is a
19 rather inelastic demand for hops. It is a fairly
20 consistent deal, and a little bit changes things a lot.
21 So once a base is established, it is just a matter of
22 who has it. The volume doesn't change a lot. It is
23 just maybe in different hands.

24 Q. But it cost a good bit back under the old
25 order -- didn't it? Or at least at different points

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1 under the old order, didn't base cost a substantial
2 amount?

3 A. That varied a lot with the value of the
4 market. When times were good, base had more value; when
5 times were poor, it had little value. At the stroke of
6 a pen, it had no value.

7 Q. When you mentioned the inequities in your
8 statement, was it perhaps with respect to the folks who
9 are going to have to buy base under the new order?

10 A. No. I don't see that a lot of people
11 have to buy a lot of base. Maybe I am wrong, maybe I am
12 thinking incorrectly.

13 ***

14 MR. CARSWELL: Thank you, sir.

15 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
16 Carswell. I am waiting for Dr. Tweeten to ask that
17 question again that has two choices. I think this would
18 be a good one to try that on, Dr. Tweeten.

19 MR. TWEETEN: Thank you, Your Honor. I would
20 like to ask Mr. Serres a question or two.

21 ***

22 BY MR. TWEETEN:

23 Q. Are you absolutely convinced that a
24 committee of growers can do a better job than the market
25 of allocating resources to serve best the interest of

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1 the hop industry and the public?

2 A. Am I convinced that a group of several
3 people on a committee can do a better job than whom?

4 Q. Eight people on a committee running a hop
5 marketing order can do a better job than the market of
6 allocating resources in the hop industry to serve
7 growers and the public?

8 A. At times, I think so, because the order,
9 if you will, can have the strength or the control to not
10 allow the instant upswings, if you will, which ends up
11 costing a tremendous price on the flip or the downside.

12 Q. Looking at it from your long experience,
13 not just in the State of Oregon or Washington, but in
14 world perspective, can you think of any case where a
15 committee has done a better job than the market of
16 allocating resources in an industry?

17 A. No.

18 ***

19 MR. TWEETEN: Thank you.

20 ADMINISTRATIVE LAW JUDGE: Are there
21 additional questions -- by the way, I think that
22 microphone will no longer interfere with the mic that
23 Mr. Monahan has, because the sound technician did some
24 switching of equipment, so I think they can both be on
25 at the same time now. Are there any other questions for

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1 Mr. Serres from those who are here in a position against
2 the marketing order? There are none. I would now
3 invite questions from USDA representatives. Dr. Hinman.

4 MR. HINMAN: Yes.

5 ***

6 BY MR. HINMAN:

7 Q. Mr. Serres, I believe you have heard me
8 ask this question about the size of a grower is small or
9 large, depending on whether your total sales of hops in
10 a recent typical year are above or below \$750,000. If
11 you are willing to say so, could you say whether you are
12 above or below that just in terms of hops sales?

13 A. \$750,000?

14 Q. Yes, \$750,000 per year in total sales
15 from hops, are you below or above that, if you are
16 willing to say?

17 A. I am willing to say -- this year -- which
18 year?

19 Q. A recent year. Pick your favorite year.

20 A. I have become quite small, so yes, my
21 sales are less than that.

22 Q. And if you added all agricultural sales,
23 including your grass seed and other things, would the
24 answer be the same or would it be different?

25 A. It would be considerably different.

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1 Q. Considerably different. And just one
2 more follow-up question on that. You have stated your
3 views that, you know, the benefits of an order would
4 exceed the cost, in your view. And in terms of -- I
5 know it is hard to figure out exactly what compliance
6 would involve, but in your view, is there any -- would
7 you have any belief that as a small operator, in terms
8 of paperwork and other compliance issues you would have,
9 would you be disadvantaged or burdened in any way more
10 than a large grower under the definition because of the
11 order, or do you think that the burden would be
12 proportionately equal?

13 A. I think it would be proportionately equal
14 and would not be a large difference.

15 ***

16 MR. HINMAN: Thank you very much.

17 ADMINISTRATIVE LAW JUDGE: Other questions
18 from USDA representatives?

19 ***

20 BY ADMINISTRATIVE LAW JUDGE:

21 Q. Mr. Serres, would there be an easy way to
22 determine who would vote if it is one grower/one vote?
23 For example, you are familiar, especially, with the
24 Oregon hops growers. Would it be easy to separate out
25 the different entities that may have been created for

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1 family reasons, or for tax reasons, or whatever, but
2 there is truly one controlling person involved with more
3 than one entity?

4 A. Are you asking is there an easy way to
5 sort out, if there is one vote per farm, how many farms
6 there are?

7 Q. Or if the intent is to have each true hop
8 producer having only one vote, despite the number of
9 business entities?

10 A. I think that can be resolved. There
11 might be a few glitches or exceptions, but for the most
12 part, we know how many family entities there are, and we
13 know how many pickers there are. Most growing entities
14 have their own harvest facilities. There are very few
15 that do custom harvesting or have their crop harvested.
16 There is a little of that; not a lot, and kind of by
17 harvesting facility and family, I think it could be
18 trimmed pretty straightforward.

19 Q. Would that be done -- for example, could
20 it be done through your Oregon Hop Growers entity or
21 through the Oregon Hop Commission, or who could certify
22 the list of growers to USDA?

23 A. I imagine the Oregon Hop Commission.

24 Q. Have you served on that commission?

25 A. Many, many years.

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ADMINISTRATIVE LAW JUDGE: Is there any other question for Mr. Serres from anyone? Mr. Serres, is there anything else you would like to add?

MR. SERRES: No, Your Honor.

ADMINISTRATIVE LAW JUDGE: All right. Thank you so much.

MR. SERRES: Thank you.

ADMINISTRATIVE LAW JUDGE: I am giving the original exhibit to the Court reporter, and I would like to have an extra one for the typist if there is an extra copy. Good. He has got it. Mr. Brulotte, would you like to come forward to testify now? I am marking Br. Brulotte's statement as Exhibit #47. And Mr. Brulotte, before you begin, I am going to ask you to sign this one, which will be the record copy. Thank you. Mr. Brulotte, would you state and spell all of your name?

MR. BRULOTTE: My name is Ronald L. Brulotte, R-o-n-a-l-d, B-r-u-l-o-t-t-e.

ADMINISTRATIVE LAW JUDGE: Thank you. Would you raise your right hand, please?

[Witness sworn]

RONALD L. BRULOTTE,
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1 having first been duly sworn, according to the law,
2 testified as follows:

3 BY ADMINISTRATIVE LAW JUDGE:

4 Q. Thank you. Will you be able to give us
5 your hops background within the statement that you have
6 prepared?

7 A. No. I will start -- that will be in
8 addition to what is in the statement.

9 Q. Please.

10 A. I am a fifth generation hop grower. I
11 was in business for about 30 years, personally. Our
12 family goes back to the mid 1880's. And I guess 100
13 percent French for those that need to know. And also,
14 for the record, for the Department, we are considered
15 large growers by their definition. Gary Morford -- I
16 did not take Ag Econ 450 from Dr. Fawell. I stopped at
17 Econ 101 and got out of the economics and went to
18 agronomy. Over the course of the last 30 years, I have
19 served on numerous boards for the industry. I spent
20 many years on Hop Growers of Washington Board, a few
21 years on the Washington Hop Commission, Chairman for six
22 years of those. I served some time on the Hop Growers
23 of America Board. I spent approximately 15 years as a
24 Hop Research Council representative to the growers in
25 Washington State. With that, I will read my statement.

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1 Being a hop farmer for 30 years, I grew hops under the
2 last marketing order. With that, I will also note that
3 I was also a Director of the Hop Marketing Order for
4 several years before its demise. Okay. Back to my
5 statement, I fully supported the last order and fully
6 support the proposed order that we are hearing now. I
7 served on the advisory board of the last order and
8 believe the marketing order should never have been
9 removed. Under the stability that the marketing order
10 has brought to the industry, our operation was able to
11 obtain base and grow as needed. There has been dramatic
12 upward and downward swings in prices since the last
13 marketing order, as has been talked about here and
14 throughout the meetings. The recent inventory buildup
15 in growers' hands of alpha products from bales, pellets,
16 and extracts, and the shrinking stocks being held by
17 dealers and breweries has shifted more cost to the
18 producer. Carrying inventory and the costs associated
19 with holding those hops and the decline of forward
20 contracting for alpha hops has created additional burden
21 for the growers on a depressed market. The proposed
22 marketing order has addressed many concerns that people
23 had with the previous order. Growers maintaining
24 ownership of pool hops removes the complaint that excess
25 hops were dumped cheaply into the market as packaged

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1 hops. The issue of new entry has been addressed by
2 allowing new base to be issued that doesn't necessarily
3 burden the market during down times by only issuing base
4 when salable is increased, as to the provisions you have
5 heard here this week. We have been our own worst enemy.
6 The U.S. hop acreage has fluctuated from 20,000 to
7 50,000 plus acres. These swings hurt everybody, with
8 growers going out of business during each cycle. Many
9 growers have the mentality that even during a depressed
10 market they must sell below their cost of production so
11 they can maintain their production share. At some
12 point, even the efficient growers become inefficient in
13 the sense that by reducing costs they start jeopardizing
14 their yields per acre and quality. For example, not
15 spraying sufficiently and causing mite damage and
16 powdery mildew to flourish, thus reducing quality and
17 yields. This attitude makes for a worsened situation.
18 With a stable market, growers won't find it necessary to
19 sell at any price and may ask for a fair and equitable
20 return for their efforts. The last and most important
21 factor for a marketing order would help to control new
22 plantings once supply and demand are in balance. This
23 would result in a reasonable and equitable return for
24 the production of hops.

25 ***

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1 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
2 Brulotte. Are there any questions of Mr. Brulotte from
3 those who are here in a position in favor of the
4 marketing order?

5 ***

6 BY MR. MONAHAN:

7 Q. I would just ask Mr. Brulotte, as a fifth
8 generation hop farmer, to identify any prospective sixth
9 generation hop farmers in the room.

10 A. Yeah. There is one sitting here at the
11 table to my left and I think my son is somewhere.

12 ***

13 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
14 Monahan. Is there any objection to the admission into
15 evidence of Exhibit #47, which is Mr. Brulotte's
16 statement, which is dated December 12, 2002? There is
17 none. Exhibit #47 is here by admitted into evidence.
18 Are there any questions from those in a position against
19 the marketing order? There are none. Are there any
20 questions from USDA representatives? Ms. Finn.

21 MS. FINN: Good afternoon. Thanks for turning
22 that on for me, Don.

23 ***

24 BY MS FINN:

25 Q. In your letter, you say that the recent
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1 inventory buildup in growers' hands has shifted from the
2 brewers to growers. Do you know why that has happened?

3 A. I have heard different things. One of
4 the things, I think, was the corporate attitude about
5 buying things as needed and not carrying inventories so
6 that causes a reduction in stocks, I think, and buying
7 as needed on a timely basis and that, and heard rumors
8 that some brewers have thus reduced their inventories.
9 I think that has been shifted back down to our level,
10 and it certainly reflects in our operation.

11 ***

12 MS. FINN: Thank you.

13 ADMINISTRATIVE LAW JUDGE: Are there any other
14 questions from USDA representatives? Are there any
15 questions for Mr. Brulotte from anyone? There are not.
16 Mr. Brulotte, thank you very much.

17 MR. BRULOTTE: You are welcome, Your Honor.
18 Mr. Gasseling, would you -- you are not coming back? We
19 will change the tape now at 3:24.

20 ***

21 [Off the record]

22 [On the record]

23 ***

24 ADMINISTRATIVE LAW JUDGE: ...3:25. Mr.
25 Gasseling, would you again state your name?

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1 MR. GASSELING: Thomas W. Gasseling,
2 G-a-s-s-e-l-i-n-g.

3 ADMINISTRATIVE LAW JUDGE: Thank you. I think
4 we were in cross examination, and I don't remember --
5 Mr. Moody, would you like to pick it up?

6 MR. MOODY: Thank you, Your Honor.

7 ***

8 THOMAS W. GASSELING,
9 having previously been duly sworn, according to the law,
10 testified as follows:

11 BY MR. MOODY:

12 Q. Okay. Mr. Gasseling, we were talking
13 about -- we finished talking about information, and we
14 were going to talk about whether or not you would agree
15 with the previous testimony that the worldwide demand
16 for -- or on a worldwide basis, that alpha hops are
17 substitutes for each other?

18 A. To a degree, yes.

19 Q. Is there in some way that statement is
20 not completely true?

21 A. Well, there are some alpha hops that are
22 preferred by particular customers, by variety, so they
23 may not in some cases consider other hops
24 interchangeable.

25 Q. Generally speaking, has there been a

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1 trend during recent years among more breweries to buy
2 alpha based on, you know, dollars or euros per kilogram
3 basis, wherever it comes from?

4 A. Well, it depends. It seems to depend on
5 what the market does. If the market is down, then there
6 is a lot of questions being variety specific. If the
7 market is real hot, or high, that becomes less of an
8 issue.

9 Q. You are both an alpha and aroma grower?

10 A. Yes.

11 Q. Do you have contracts for both now?

12 A. For what -- for this year, or for next
13 year, or...

14 Q. For '03.

15 A. I had contracts and I also had spots, or
16 have spots.

17 Q. Could you comment on the relative
18 benefits between those two markets, between the contract
19 market and spot market?

20 A. Well, for me, it is much better to be
21 contracted than to have a large amount on the spot
22 market. I would rather be able to plan for the year
23 knowing what I can expect versus waiting until after I
24 have grown the hops to find out what I am actually going
25 to get.

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1 Q. What benefit does the spot market provide
2 you?

3 A. If the spot market is very low, it
4 benefits me very little. If the spot market is high --
5 and this is if I have spots, because you can't just
6 always plan on growing exactly what you need. If I have
7 them and the market is low, it is not good. If I have
8 them and the market is high, I am a happy camper.

9 Q. And you are diversified across other
10 agricultural commodities besides hops?

11 A. Yeah. We have all the big winners.

12 Q. Like apples, and peaches, and cherries?

13 A. Yeah. We have apples, and we grow corn,
14 which are big money makers, so we have some good ones.
15 Just a plug -- we do grow Christmas trees, too, so if
16 anybody is interested.

17 Q. Just approximately, what percentage of
18 your agricultural acreage is devoted to hops?

19 A. Approximately, half.

20 Q. There has been previous testimony that
21 the major changes since the end of the old order have
22 been the beginning of the use of direct brewery
23 contracts, the decline in demand by brewers for alpha
24 hops, the development of super high alpha varieties.
25 Can you think of any other major changes since then,

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1 since the termination of the old order?

2 A. The introduction of additional downstream
3 products.

4 Q. And what would be a good example of that?

5 A. Well, years ago, nobody talked about
6 culletizing, nobody talked about extraction. The
7 extraction methods were, by today's standards,
8 relatively inefficient, and now replaced by much more
9 efficient processes which can now even refine those
10 products down to even more refined usage specific basis,
11 which ultimately means they use less.

12 Q. So growers have become more productive
13 and more efficient at the same time, and more
14 technologically innovative?

15 A. I would say maybe yes to the first two,
16 but the technology aspect of it, I would say there was a
17 much greater advancement in technology in the hop
18 industry during the last hop marketing order than we
19 have seen since it went out.

20 Q. Okay. What occurred -- in terms of
21 technology, what occurred in the '66 to '85 period?

22 A. The introduction of automatic kill laying
23 systems, introduction of automatic systems to remove the
24 hops from the floors, temperature and moisture sensing
25 devices, computerized systems, changing over of old

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1 drying facilities to more modern specs, building new
2 drying facilities from ground up, putting new picking
3 machines in, changing the way we actually harvest the
4 crops, and since that period of time, I think it has
5 been attested to, there has been very little investment
6 in that type of infrastructure, unless you have had a
7 fire and there is insurance money.

8 Q. So most of the innovation has occurred
9 post harvest since the end of the old order?

10 A. Could you repeat that, please?

11 Q. Yes. Most of the innovation since the
12 end of the old order has occurred post harvest? With
13 respect to the changes in the downstream products you
14 talked about before?

15 A. Well, the downstream products are done,
16 you know, at the palletizing and extraction level so
17 they wouldn't really be from the grower's standpoint.
18 They are further down the line.

19 Q. Oh. Has the installation of that
20 equipment gotten you a greater return per pound?

21 A. Of the farm equipment that I just
22 mentioned?

23 Q. No. A greater return to your hops,
24 having that improved technology for processing products?

25 A. I think it has been a negative from a

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1 grower's standpoint. They use less hops. The hopping
2 rate goes down.

3 Q. Any particular reason you don't use
4 Yakima Chief on a regular basis?

5 A. They won't let me in.

6 Q. Do you think they have got a good
7 business model over there?

8 A. It is not the business model I would have
9 put forward. We do operate under it with our apples, a
10 similar such deal. I think because of the shrinking
11 possibilities for what I can do, I have to look at
12 everything that might come my way as far as how to
13 market. I am less set in my old ways now than I was a
14 few years ago.

15 Q. When you left Steiner, how many dealers
16 were there in the industry at that point?

17 A. Well, you might ask Steiner about that.
18 I didn't work for Steiner. I worked for Haas.

19 Q. Oh, I am sorry.

20 A. What was the question again?

21 Q. When you left...

22 A. That threw me.

23 Q. When you left, how many dealers were
24 there at that time?

25 A. There were quite a few more than there

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1 are right now.

2 Q. Like 10 or 20?

3 A. I don't know. There were probably eight
4 or nine, maybe ten.

5 Q. Haven't some of the dealers who have left
6 been replaced by breweries who buy direct now?

7 A. Well, in my instance, I guess you would
8 say that is true because prior to that period, we didn't
9 sell directly to breweries.

10 Q. So counting breweries, from a grower's
11 point of view, there is actually more buyers now today
12 than when you left Haas?

13 A. I would say no.

14 Q. Why is that?

15 A. Well, I just count them, and one way I
16 get less than the other.

17 Q. One of your colleagues testified there
18 were like 900 microbreweries that come to buy from the
19 industry now.

20 A. Well, Mr. Moody, most of those 900
21 breweries might buy a quarter of a bale, a half-a-bale,
22 a bale-and-a-half. They might buy today, they might buy
23 six months from now. They might pay today, they might
24 pay six months from now. I don't know the exact number,
25 but when I was involved in it, when the microbreweries

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1 were first getting started, when Ankerstien, basically,
2 was really the first, from that point forward, we have
3 had so many microbreweries, if you counted the number of
4 microbreweries that have come into existence in the last
5 15 years, and then counted in total, and then count what
6 are left, you would be amazed. Some of them don't even
7 last six months. So to try to gear my operation to sell
8 a quarter of a bale, or a quarter of a pound, or a half-
9 a-bale of hops doesn't work. We don't have the
10 infrastructure. Now, there is, I understand, an
11 operation that does that, and I commend them for it, but
12 the cost for us to do it would far outweigh the benefit.

13 Q. Okay. So even though there is a lot of
14 them, they are just too small to be important to you?

15 A. They are too small -- not that they are
16 not important, because they use hops, but they are too
17 small for us to be effective in trying to supply them.
18 And there is another entity that has a huge chunk of
19 that business of which I don't have a part of that one
20 either. You know, when you talk about 900 breweries,
21 you make it sound like there is 900 Anheuser Busch's out
22 there. That is not the case. Those 900 breweries are
23 in a whole different category.

24 Q. You said you know people who report
25 erroneously. Do you know what they report and why they

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1 report erroneously?

2 A. I know people who report erroneously and
3 I know people who don't report at all.

4 Q. Okay. What is it that they are reporting
5 erroneously and not reporting at all?

6 A. Well, I am one, and I have made it very
7 clear, I am one that doesn't report at all, so that
8 immediately makes the acreage skewed.

9 Q. Oh. So these are your production
10 figures?

11 A. Among other things, but there are other
12 people that I know, in fact, don't give the correct
13 numbers.

14 Q. If you know, why do they do that?

15 A. They must think it benefits them to have
16 the numbers be one way or the other. I don't ask them.
17 And that is the reason that I said in the beginning, if
18 it is mandatory, everything that is mandatory I report
19 and I report accurately. But when it comes to voluntary
20 reporting, knowing that the numbers aren't correct
21 anyway, I have no use for that.

22 Q. Okay. You had testified -- I gather you
23 agree with the previous testimony that the old order did
24 not work well at its end?

25 A. At the end, no.

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1 Q. And would you agree with the other
2 testimony that that is motivated by -- the reason for
3 that is there was too much greed going on?

4 A. No.

5 Q. Okay. What was the reason?

6 A. Well, it has been interesting sitting
7 here listening to the testimony here in Yakima and in
8 Oregon. A number of the people that are testifying, or
9 I should say, in the essence of being associated with
10 the industry, had relatives that were members of that
11 committee at the tail end. And I blame the committee
12 for the demise of the federal marketing order. They
13 refused -- now, this is my opinion. You asked it, I
14 will give it to you. They refused to listen to what was
15 happening in the industry. There were some growers on
16 the committee who wanted to make some changes, and those
17 growers were adamantly shut down. It came to the point
18 where it was -- and I think, Mr. Moody, you were
19 involved in that. I didn't recognize you, but I think
20 you were there with Mr. St. Mary at one point.

21 Q. Yeah, I am kind of wrinkled, but you are
22 still as handsome as ever.

23 A. I think you changed your hair color or
24 something. But it became a personality issue more, to
25 me, than a greed issue. It became an "I want it, you

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1 are not going to get it" issue. And had the committee
2 have functioned like they should have and addressed the
3 issue, I don't think it would have been thrown out. In
4 addition, the arrogance of the committee was such that
5 they hired a former Department of Ag attorney to sue the
6 Department. That is not good business. You don't sue
7 the people who can shut you down. You know? Greed was
8 a part out there, but when you really get down and you
9 tear this thing apart, the actions of the committee
10 really are what threw this thing out, or got it thrown
11 out by the Department, because they did not believe --
12 there were committee members who would not believe that
13 the Department of Ag, the U.S. Government, would have
14 the guts to throw it out.

15 Q. I didn't believe it either.

16 A. I didn't either. It shocked me.

17 Q. What safeguards have been built into the
18 new program to make sure that type of meltdown doesn't
19 occur again?

20 A. Well, I think we have provisions in there
21 for entry. We have provisions, and I would envision
22 the -- for transfers. We have provisions for -- I
23 wouldn't say provisions, but I would envision that the
24 process of getting your point across to your
25 representatives is going to be much better. We have

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1 clauses in this marketing order; basically, one grower,
2 one vote. That was a big problem in the old one. We
3 had an area in this valley that if you had a certain
4 name, you were guaranteed that you were going to have
5 that area, because there were so many votes that were
6 skewing the representation. We have tried to address
7 that in this marketing order so that doesn't happen.
8 The base allotment, or the pool situation, is another
9 thing that is entirely different, allows flexibility.
10 So there are numerous things in this order, and that is
11 why I can support this one and the other one I had so
12 much problem with.

13 Q. But do you think a committee of eight can
14 make better decisions collectively than you can
15 individually?

16 A. I think given the way this is set up to
17 operate, I think, in fact, with the ability to obtain
18 the information necessary, they can do as good a job in
19 the long run in that they can balance out the huge
20 swings we have in supply. And that is why I think it
21 will work.

22 Q. Okay. I want to work through a little
23 example on base. First, in the last few years, have you
24 been an expanding producer or a reducing producer?

25 A. Expanding.

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1 Q. So under the new order, would you need to
2 buy base?

3 A. At what salable?

4 Q. Sixty-five percent.

5 A. Yes.

6 Q. It doesn't bother you?

7 A. No.

8 Q. All right. Do you have a little piece of
9 paper up there?

10 A. Yes.

11 Q. Okay.

12 A. It is all crinkled, though, because it is
13 wet, but I guess it is okay. Go ahead.

14 Q. 275 acres...

15 A. 275 acres?

16 Q. Uh-huh.

17 A. Okay.

18 Q. Millennium.

19 A. Millennium.

20 Q. Fourteen percent.

21 A. Fourteen percent.

22 Q. Galena, 13.5 percent.

23 A. Thirteen point five percent.

24 Q. Cluster, 8 percent.

25 A. Cluster 8 percent. Maybe we ought to

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1 just have Stacy get up and ask the questions.

2 Q. And so the acres for each of these now
3 are 100 acres millennium; Galena, 100 acres; and
4 cluster, 45.

5 A. Okay. Where is the other 30?

6 Q. Okay. We will change that third one,
7 cluster, to 75 acres.

8 A. Okay.

9 Q. Okay. So that is going to give us
10 200,000 pounds millennium; 200,000 pounds galena...

11 A. Just a minute, you are going too fast. I
12 can't write that fast.

13 Q. I am sorry. I apologize.

14 A. Galena, 200,000...

15 Q. Millennium, 200,000.

16 A. Okay.

17 Q. And cluster, 150,000; a total of 550,000
18 pounds.

19 A. Okay.

20 Q. And the alpha acid pounds, millennium,
21 30,000...

22 A. You have done the calculation?

23 Q. Yeah.

24 A. Okay. So now, that is 30,000 alpha.
25 Okay.

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1 Q. Galena, 27,000.

2 A. Okay.

3 Q. Cluster, 15,000.

4 A. Okay.

5 Q. Total, 72,000.

6 A. Okay.

7 ***

8 MR. MOODY: Could I have one second, Your
9 Honor?

10 ADMINISTRATIVE LAW JUDGE: You may. Let us go
11 off record.

12 ***

13 [Off the record]

14 [On the record]

15 ***

16 ADMINISTRATIVE LAW JUDGE: Back on record at
17 3:50. Mr. Moody, we are going to come back to the
18 calculation?

19 MR. MOODY: Yes, Your Honor.

20 ADMINISTRATIVE LAW JUDGE: All right. You may
21 proceed.

22 ***

23 BY MR. MOODY:

24 Q. As I understand it, the order has no
25 provision for the committee to keep a public database of

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1 who has got what base and what is for sale. Is that
2 correct?

3 A. Well, there will be a database for the
4 amount of base allotment, I would envision, that each
5 grower has.

6 Q. Okay. But wouldn't it be like a trading
7 place, kind of like eBay, where you can go to buy and
8 sell your base?

9 A. No.

10 Q. How will the marketing, and purchasing,
11 and sale of base occur?

12 A. The committee is interested and involved
13 in only one thing, and that is the transfer of base
14 allotment. They keep track of where the base is
15 transferred, from who to who -- excuse me. They make
16 sure that the person that the base is being transferred
17 to has the ability to produce that additional allotment.
18 They keep track of the fact that that base allotment
19 cannot be transferred back to that grower for two years,
20 and if it is, that grower has to be able to show that he
21 has the capability to grow the hops. Beyond that, the
22 committee has no involvement at all.

23 Q. Okay. So a base could be traded on eBay?

24 A. Well, I guess it could, as long as the
25 person who purchased the base was able to confirm to the

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1 committee that they, in fact, had the ability to grow
2 the product.

3 Q. Is the price at which base is bought,
4 sold, or leased, publicly disclosed?

5 A. Well, since it hasn't happened yet, there
6 hasn't been any sales or leases, so I don't know. But
7 that is -- the transfer is all that the committee is
8 interested in. What the ultimate arrangement between
9 the transferee and the transferor, or whatever those
10 are, is between them.

11 Q. Would you support a change or an addition
12 to the rule that would make base transactions
13 transparent, public, and disclose their prices in order
14 to lead to a more efficiently functioning market for
15 base?

16 A. You are asking my opinion?

17 Q. Yes.

18 A. I don't see the value in that.

19 Q. Well, if you had to go buy base, how do
20 you know you are getting a good deal?

21 A. Well, the way things have been going, I
22 haven't been getting too many good deals, but I would --
23 again, if I go back to the way the old order operated
24 and the way that the mint order operates, it is a small
25 industry. You know what is being transferred and what

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1 isn't being transferred. To publish something or make
2 something public after it happens, it really is after
3 the fact so it doesn't make any sense or any real
4 difference to me that it is published.

5 Q. You would agree with me that a lot of
6 things you buy, you get to go look at the price first.
7 Like you would got to K-Mart and see the prices there;
8 or you want to buy a home, you can look at the recent
9 sales in MLS; if you want to go eBay, you can look at
10 the bids; if you want to buy stocks, you can look in the
11 Wall Street Journal. The public disclosure of prices
12 and quantities of sales is pretty in markets these days.
13 Would you agree with that?

14 A. Well, yes, but by the same token, I know
15 that people buy and sell houses, and buy and sell real
16 estate, and those things never, ever get put out into
17 the public arena. It is all done between two
18 different -- you know, a buyer and a seller without any
19 advertising at all. It is by word of mouth, it is by
20 inquiry, but not necessarily you have to advertise that
21 you have got something for sale, to sell it.

22 Q. So for learning about prices, you would
23 be willing to trust industry gossip?

24 A. Pretty dang accurate, I will tell you.

25 Q. It seems to be. All right. On the

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1 selection of the base period '97 to '01, I gather,
2 pretty recently, the Proponents decided or the USDA
3 suggested you should add '02 to that?

4 A. Well, I think it was a combination of the
5 fact that this process has taken a little longer than we
6 anticipated, the concerns of the Department with regards
7 to the '02 crop. I think there was a concern with the
8 one new grower that had appeared on the horizon. The
9 whole intent of the '01 was to put everybody on notice
10 that this was going to be the period, and don't try to
11 think that you are going to do something that might
12 benefit you by taking advantage.

13 Q. Is it your understanding, generally, that
14 expanding, Bruce and Acua [ph] had been expanding
15 recently, would potentially be required to buy base,
16 again, depending on the salable, whereas, producers who
17 had been contacting would generally be getting base?

18 A. Mr. Moody, there is a situation whereby
19 you could be -- what is the word -- getting smaller,
20 there is expanding...

21 ***

22 ADMINISTRATIVE LAW JUDGE: Retracting?

23 MR. GASSELING: Retracting. Thank you very
24 much. And actually, be producing more. In our
25 operation, our acreage and production was higher in the

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1 early years of hops, but our -- when you calculated on
2 an alpha basis, in fact, we are growing less acres and
3 our production is higher. So just to say that somebody
4 that is not expanding or retracting, is getting smaller,
5 isn't correct. It may well be that acreage is smaller,
6 but production in pounds, production in alpha, may be
7 bigger.

8 ***

9 BY MR. MOODY:

10 Q. Right. When I was using the terms
11 "expanding and contracting", I was referring to pounds
12 of alpha.

13 A. Well, that is what I am referring to.
14 Oh, I see -- you are just using strictly pounds.

15 Q. Yes.

16 A. But we are talking about in many
17 instances during this hearing, we talked about expanding
18 alpha production, expanding hop production, expanding
19 pounds. And in fact, in acres, all of these things have
20 been used to show that there are growers that are
21 getting smaller, so consequently, they are going to have
22 a windfall. You could, in fact, be getting smaller and
23 need more allotment.

24 Q. Well, some of the material submitted to
25 USDA by the Proponents Committee talked about the need

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1 or the desirability of an exit strategy to help
2 transition people of the industry. I gather -- it
3 didn't say this, but I gather they had other things to
4 do with their resources, or were ready to retire or
5 something, or just were less efficient than some of the
6 newer expanding producers. What did the Proponents
7 Committee mean by the need for an exit strategy?

8 A. Well, that has never been an issue with
9 me. I have never really addressed that because what is
10 going to happen is going to happen. And if we are naïve
11 enough to think that there aren't going to be some that
12 leave and some that expand, you know, I think we all
13 realize that. And that may be an offshoot of that but
14 the whole premise for this thing was to stabilize the
15 industry.

16 Q. Okay. A farm that produces '97, '98,
17 '99, '01, increases every year, its highest year is '01,
18 is sold to farmer #2, and he produces it in '02. As I
19 read your rules, and correct me if I am wrong, both
20 farmer #1 and farmer #2 would be entitled to base.

21 A. In that scenario, both growers would be
22 eligible to apply for base. You are correct.

23 Q. For the same farm?

24 A. It is not the same farm.

25 Q. The same land?

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1 A. It may or may not be the same land.

2 Q. Well, in my hypothetical, it is the same
3 land.

4 A. Okay. We are back to the hypothetical.

5 Q. Yes.

6 A. Yes, it would be. And the reason for
7 that is because -- and again, we may have one instance
8 of this that I can think of -- one. You can't write
9 something that takes into account every possible
10 situation, but I think that it states they would be
11 eligible. The committee could look at that, there could
12 be a tightening of the bona fide effort requirement.
13 There is a number of things the committee could do that
14 that grower that had sold his operation, although he
15 might be eligible, he wouldn't meet other requirements
16 that might be set to be issued base allotment.

17 Q. In your opinion, should both farms get
18 base -- or both farmers get base?

19 A. Well, in my opinion, we should have stuck
20 with the 2001. That is why I wanted to do it. But we
21 have added this in there, so given this scenario, yes, I
22 think they should be eligible.

23 Q. But a producer who was a bona fide
24 producer in '02, doubled its production in '03, he would
25 not be entitled to count that '03 production toward his

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1 highest year?

2 A. No.

3 Q. Which gets me to my next question. You
4 had mentioned, I guess, with respect to '03, people have
5 jockeyed around for better base position. Were you
6 referring to the '03 here?

7 A. Well, the word on the street, the hotline
8 was that it was certain that the Department was going to
9 use the 2003 year, so you should put some additional
10 acreage in, grow some additional production, so you had
11 a better position than those who don't do so.

12 Q. What would happen if the Department were
13 to decide to use the '01, '02, and '03 years, take the
14 higher out of those three years for the determination of
15 base?

16 A. Do you mean, block off the other years
17 and just use those three years?

18 Q. Yes, the most recent three years.

19 A. I would be opposed to doing that.

20 Q. You were around during the old order, I
21 think. Right?

22 A. Yes.

23 Q. And they used the three previous years to
24 figure the base for that one?

25 A. Yes.

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1 Q. Okay.

2 A. I wasn't around to do that calculation.
3 I was, actually, just going to college then.

4 Q. Okay. Well, why should they go -- why
5 shouldn't they just do it the same way this time?

6 A. Well, I guess I could go back and go over
7 each one of these years and why this time period was
8 chosen. If you want me to, I will do that again, but
9 there was a reason for doing that.

10 Q. I think I understand that but, basically,
11 the reason we can't use '01, '02, and '03, is because
12 '01 and '02 are, themselves, defective years.

13 A. What do you mean that they are defective?

14 Q. Well, I think you said that '01 had
15 water, hale, set aside; '02 had more set aside;
16 basically, those were the reasons.

17 A. Well, but that is why we gave the growers
18 the option and it was set up this way so that a grower
19 would not be penalized for something that might have
20 been out of his control. He was able to pick a year
21 that everything worked for him. It was felt -- and this
22 was not just the committee's proposal. I mean, Oregon
23 was adamant that we go back to at least '97. There were
24 some growers in Oregon that wanted to go back to 1978.
25 So I mean, this wasn't just pulled out of the air. I

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1 don't think -- and I would ask this if you can't answer
2 me, because I guess you are not under oath, but if
3 somebody got hit by hail in 2001, and left acreage idle
4 in 2000 because of the alliance, and then in 2003
5 because he couldn't sell the hops, didn't grow them, he
6 shouldn't be considered a grower, have any way to get
7 allotment? I don't think that is fair, and it may be
8 fair to some people, but we are trying to be as fair as
9 possible to as many people as possible, and if you take
10 that timeframe, I don't know of one grower that wouldn't
11 have an advantage in one of those years.

12 Q. Do you think there were growers who
13 planted acreage in '03 just because of the possibility
14 that they could earn base on it?

15 A. I can't say that for sure, but I know
16 that was being definitely put out there as a
17 possibility.

18 Q. Well, was there any other kind of unusual
19 crop or act of God kind of thing in '03 that would make
20 it unsuitable to use as a base year?

21 A. So you would like to go from '97 to '03?

22 Q. Well, let us just talk about '03 for a
23 second. Is there anything about '03 that makes it
24 unsuitable as a base year?

25 A. No. As long as -- I will put the

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1 caveat -- as long as we would not jeopardize the ability
2 of people because of what reason not to be able to
3 participate as the other ones are doing.

4 Q. Do you have data, appropriate data, back
5 to '97 for all of your alpha acid test?

6 A. Yes.

7 Q. Do you think that is true for every
8 grower?

9 A. I would say that the majority of the
10 growers, a great majority of the growers, would be able
11 to obtain that information.

12 Q. Would you agree with the testimony that
13 there are multiple ways to test for alpha, and that the
14 same hops could test differently depending on when they
15 are tested and by which method?

16 A. There is some variation, yes. But I
17 might add that most of the major labs that do the
18 analysis have a testing procedure where they test
19 amongst themselves, so that they see if one lab is out
20 of line with the other, and if it is consistent, why
21 that happens. And I don't know the exact nature of
22 exactly how they do it, but I know they do this so there
23 is some variation. But for the most part, they are
24 pretty accurate.

25 Q. Why not just use the alpha acid factor

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1 for determining base?

2 A. Well, you could, but in this instance we
3 have -- in this we are just talking about the alpha hops
4 because everything below 10 percent gets 10. We have
5 access to that data, so why not let the grower use what
6 he had? There may have been situations where some of
7 these varieties were grown and there is no -- in some
8 years where there is no official data to create an alpha
9 factor.

10 ***

11 ADMINISTRATIVE LAW JUDGE: Mr. Moody, would
12 you remember where you are, and we will change the tape
13 and take a 10-minute break? It is 4:10; please be back
14 ready to go at 4:20.

15 ***

16 [Off the record]

17 [On the record]

18 ***

19 ADMINISTRATIVE LAW JUDGE: We are back on
20 record. It is 4:27. Mr. Moody, you may proceed.

21 ***

22 BY MR. MOODY:

23 Q. Okay. Hardship provisions -- will the
24 meetings to discuss those be conducted in public so that
25 any member -- and with notice so that any member of the

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1 industry can participate in the discussion?

2 A. I have got to find that. Could you --
3 just a second. I will find it. Okay. It is number 5.
4 Go ahead.

5 Q. You are familiar with the hardship -- you
6 testified about the hardship provisions?

7 A. Yes.

8 Q. Okay. Will the meetings to discuss a
9 hardship allotment be held with notice and in public so
10 that members of the industry can participate in the
11 discussion?

12 A. Well, I think, ultimately, that would be
13 a decision up to the committee. From my standpoint, I
14 would think that the subcommittee that would be elected
15 would have those in more or less private form, because
16 there could be proprietary information have to be
17 revealed, and it really is not the total industry's
18 business. That is my opinion, but the committee would
19 ultimately make that decision.

20 Q. Okay. The bona fide effort
21 requirement -- now, I was a little confused, first of
22 all, about the part where you testified it didn't apply
23 to your whole allotment, so let us just do a quick
24 example. Your initial base is 100 pounds.

25 A. Just a minute -- I have to find a pen.

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1 Q. Oh, this is simple -- 100 pounds base,
2 salable 80 percent, so your allotment is 80 pounds.

3 A. Salable allotment for that year.

4 Q. That is correct. Okay.

5 A. Yes.

6 Q. You only sell 70 pounds. Do you lose any
7 of your allotment?

8 A. What is the bona fide effort percentage?

9 Q. Well, that is the part I didn't
10 understand.

11 A. Okay. Let me give you an example using
12 those numbers.

13 Q. Okay.

14 A. Let us say the committee says that you
15 must make a bona fide effort in the amount of 80
16 percent. That is the criteria, bona fide effort 80
17 percent. That means if I have 100 pounds of allotment,
18 the salable is 80 percent, I have 80 pounds of salable.
19 Right? Are we understanding each other?

20 Q. Yes, sir.

21 A. Okay. The bona fide effort is 80
22 percent, so I have to make a bona fide effort in the
23 number 80 percent of my annual salable. So 80 percent
24 of 80 is 64.

25 Q. Okay. So is that 80 percent -- does the

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1 bona fide effort percent have a minimum or a maximum on
2 it?

3 A. That number and the other requirements
4 will be set by the committee, depending on the market
5 conditions, depending on a number of factors.

6 Q. And is the intent of that to permit a
7 grower to, basically, idle some acreage in producing
8 facilities and not use them?

9 A. Well, the actual intent of the bona fide
10 effort is to put into play, say, a mechanism that will
11 make sure that the growers who have the allotment are
12 growing the product. If you are not going to grow up to
13 a bona fide effort level, and you consistently do that,
14 you lose your allotment.

15 Q. Right, but if it was set at 50 percent,
16 you could leave 50 percent idle, unstrung?

17 A. Well, in the example I gave, if the
18 salable was 80 and the bona fide effort was 50, if you
19 grew 40, you met the bona fide effort.

20 Q. Okay. So you could leave your other
21 acreage unstrung, for example?

22 A. In order to meet the bona fide effort,
23 yes.

24 Q. Or you could leave it -- you could pull
25 your hops out and put in a dairy farm?

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1 A. Well, there is other criteria that would
2 be a part of it, I would imagine. In the mint order,
3 under the native side, they have a bona fide effort
4 number, and I can't remember what that is, but you have
5 a one-year grace period. You have to come into
6 compliance within a year. If you don't, then you -- and
7 there are a number of ways of coming into compliance.
8 You can transfer the base away, but if you don't come
9 into compliance, the base reverts back to the committee.

10 Q. Well, does the mint order have a bona
11 fide effort percent deterrent as well?

12 A. Yes.

13 Q. And what level is it set at, typically?

14 A. I am not sure what that actual number is.

15 Q. Under what circumstances could you keep
16 your base and just lease it to somebody else?

17 A. You can't keep your base.

18 Q. Okay. Under what circumstances can you
19 lease base to somebody else?

20 A. The only thing you can do is transfer
21 base. That is all the order is interested in is the
22 transfer of base, and the criteria for transferring of
23 base is once you transfer it, to whoever you transfer it
24 to, they have to be able to represent to the committee
25 that they have the capability of producing that

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1 additional allotment. That allotment, once transferred,
2 cannot be transferred back to that producer for two
3 years, or transferred anywhere for two years. If it
4 goes back to the original producer in two years, he has
5 to show the committee that he has the wherewithal to
6 produce that product that next coming year.

7 Q. Okay. So if I am farmer A, I can lease
8 20 percent of my base...

9 A. I would rather you say transfer.

10 Q. Oh, but can it be transferred by lease?

11 A. I guess.

12 Q. Okay. Is it okay if I say lease?

13 A. I would prefer transfer.

14 Q. Okay. How about we will compromise? If
15 farmer A transfers by lease 20 percent of his base to
16 farmer B for a two-year period, at the end of the two
17 years, farmer B turns it back to farmer A. That is
18 allowable?

19 A. With the stipulations that I gave you.
20 Let us go through this. I will try to explain it. I
21 have 100 pounds of base, and in your scenario I transfer
22 20 percent of that, so I am going to transfer 20 pounds
23 of base to a grower -- I am Joe Alpha A and there is Joe
24 Alpha B over here. So I transfer that 20 pounds to Joe
25 Alpha B. Joe Alpha B has to show -- to demonstrate to

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1 the committee that Joe Alpha B can, in fact, produce
2 that additional allotment. If they can't show that,
3 they can't transfer the base. The transfer can't be
4 made. The person getting the base has to be able to
5 show that they are going to grow it. Now, let us say
6 that happens. In two years, Joe Alpha B can transfer
7 that allotment back to Joe Alpha A, but Joe Alpha A has
8 to show that he can grow that product or the transfer
9 can't take place. You have got to show that you can
10 produce that additional allotment. If you can't, the
11 transfer would be null and void.

12 Q. Okay. Can he make that showing by having
13 trellises only, but no hop plants?

14 A. He would have to produce, be able to show
15 that he is going to produce it.

16 Q. Does he have to, in fact, produce it?

17 A. Yes.

18 Q. Okay. So it is not show at the beginning
19 of the season; it is produce at the end of the season?

20 A. Well, if I transferred the base in
21 February, the base was transferred to me, and I showed
22 the committee that I had the acres in the ground for the
23 potential ability to produce that at the end of the
24 year, that would be acceptable as far as I would see.
25 But specific little criteria with regard to that will

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1 ultimately be the decision of the committee. But I am
2 just giving you my understanding how I would see it work
3 and how it works in the mint deal.

4 Q. Okay. Would producer A who gets it back
5 after two years in year three -- in year one, producer B
6 produces it; year two, producer B produces it; in year
7 three, after it has gone back to producer A, does he
8 have to produce in year three or can he turn right
9 around and transfer it to somebody else?

10 A. No. He can't transfer it for two years.

11 Q. Okay. So if he is a receiving producer,
12 he can't transfer any base?

13 A. The base -- we are not talking about any
14 base; we are talking about transferred base.

15 Q. Right. So if in a year when base is
16 returning to him, to producer A, pounds are coming back
17 to him, is he, effectively, prohibited from transferring
18 out any base for the next two years?

19 A. I think that would be a -- the final
20 decision would have to be made by the committee, and if
21 I had to look at it, my opinion would be that if this
22 was a ploy to just continually transfer base back and
23 forth, that transfer would not be allowed.

24 Q. Do you have any idea how many pounds you
25 have to produce to be an economically viable new grower

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1 of aroma hops?

2 A. No.

3 Q. Alpha hops?

4 A. No.

5 Q. Would you be in favor of putting in the
6 order a ban on leasing allotment?

7 A. Do you mean, put a ban on transferring
8 allotment?

9 Q. No, just transfer by lease; you can sell
10 it, you can't lease it.

11 A. Well, they are both transfer.

12 Q. I understand, but you kind of sound weak
13 on the whole idea of a lease here.

14 A. Well, I know maybe you are, but the point
15 is, the way the order is set up, you can transfer it.
16 How you transfer it is up to you.

17 Q. Okay. So you are in favor of permitting
18 transfers by lease?

19 A. I wouldn't have a problem with it,
20 because I think we have heard testimony that it may be a
21 way for somebody to grow in the short term, increase
22 their acreage, and be a more efficient way of doing it.
23 So I don't think it is the business of the committee to
24 get into what actually the terms of that transfer
25 transaction is.

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1 Q. During recent years and what some
2 witnesses have characterized as an oversupply situation,
3 is it your belief that the inventories have gotten so
4 large that they overhang the market, depressing prices?

5 A. In the past few years?

6 Q. Yes.

7 A. I think that has been a major problem.

8 Q. Okay. Under the order, what would
9 prevent the reserve pool inventory from reaching
10 similarly high levels?

11 A. I would say economics.

12 Q. Would you agree with me that growers are
13 going to make sure they produce their allotment, so it
14 is more likely than not that they will overproduce by a
15 little?

16 A. They could.

17 Q. So they will have some base to add to the
18 pool every year?

19 A. Not necessarily.

20 Q. From your experience in the mint order, I
21 think you described some of this in the old hop order,
22 the midnight bales problem?

23 A. Yes.

24 Q. Toward the end of the order, did the
25 cheating get as high as 10 percent of the annual volume?

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1 A. I have no way to know that.

2 Q. Did the cheating have a downward pressure
3 on prices?

4 A. Interestingly enough, what it did is
5 allow the annual salable allotment to be achieved.

6 Q. So it was a good thing?

7 A. Not the way it was handled. I mean, not
8 the way that it took place, but the fact was it didn't
9 put anymore hops on the market than the committee had
10 anticipated the salable should put out there. It just
11 arrived there in a kind of a different way.

12 Q. Okay. Mint oils -- is mint oil still
13 worked by growers, typically?

14 A. It used to not be that. The dealers used
15 to store it for the growers, but because of things that
16 have taken place, now growers are being required to
17 store oil themselves.

18 Q. And is it in 55-gallon drums?

19 A. I guess, yeah, 400-pound drums.

20 Q. Okay. And what would, you know, in a
21 typical year would one of those drums be worth -- about
22 \$1,000?

23 A. Between \$800 and \$1,000.

24 Q. Do you think there is any cheating going
25 on in the mint industry during recent years?

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1 A. I don't think so because you have the
2 ability to use that oil and move that oil under the
3 provisions of the order, so the reason to try to
4 circumvent the system is pretty much gone.

5 Q. Okay. So the inventories don't build up?

6 A. Yes, they do. You mean, the inventories
7 of sold -- or unsold oil, or pool oil, or what?

8 Q. Pool oil.

9 A. Yes, they do build up.

10 Q. But the order has a mechanism for
11 clearing that out every so often?

12 A. It gives the grower avenues to do that.

13 Q. Okay. Hops alpha is stored in 55-gallon
14 drums as well?

15 A. That is one way it is stored.

16 Q. Okay. And in a typical year, what would
17 one of those drums be worth?

18 A. I don't know. I would have to figure it
19 out.

20 Q. \$3,000, \$4,000, \$5,000?

21 A. I don't know.

22 Q. How do you envision the compliance
23 function working -- would the committee people need to
24 come around and look in every grower's pool to make sure
25 it is there?

1 A. From experience with the mint order, the
2 organization that either it is the employees of the
3 committee or they may farm it out to a third party to
4 administer, a third party administrator. They have the
5 authority in here to come and inspect to verify that the
6 documents that you have supplied and the records you
7 have supplied are correct. Now, in the mint industry
8 they -- the people responsible for that make spot
9 checks. They may check everybody, they may check a spot
10 situation. They have the authority to come and check
11 the drums themselves for content. So they have the
12 ability to check as tight as they need to, to make sure
13 that there is no -- as much as possible, there is no
14 funny business.

15 Q. And your belief is there is enough
16 policing going on in the mint order to discourage
17 cheating?

18 A. Mr. Moody, here is my thought, again. I
19 said it earlier. It would take two willing participants
20 to do that. It would take a producer or somebody who
21 has the product it getting it to somebody who could get
22 rid of that product. There is not many people in this
23 industry that have the ability to do that, and I can't
24 imagine in my wildest dreams that any of those people
25 that have that responsibility would jeopardize the

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1 potential of their total business to do that, because
2 what happens, if the committee suspects this and has
3 reason to feel that there has been some kind of illegal
4 activity, bring the Justice Department in and turn them
5 loose, and I don't think anybody wants that. So yes, it
6 could happen, you know. The moon could fall into the
7 earth tomorrow, but what are the odds that it is going
8 to happen? I don't think it is that big of an issue,
9 and I don't think there is the capability given the
10 players in this industry of doing it. Somebody would
11 hear, and if somebody hears, it is out.

12 ***

13 MR. MOODY: Thanks very much, Mr. Gasseling.
14 I think that is it. I appreciate your help. Thank you.

15 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
16 Moody. Mr. Carswell.

17 MR. CARSWELL: Thank you, Your Honor.

18 ***

19 BY MR. CARSWELL:

20 Q. Can I still call you Tom?

21 A. You sure can.

22 Q. Thanks. Tom, I wanted to ask you
23 about -- I am not going to ask you about the 900 micros.
24 You made it clear that you don't -- I shouldn't go
25 there. But I am wondering, are you familiar with any

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1 direct sales other than the ones we have heard about, to
2 AB and Coors, any development of even a small percentage
3 of direct sales to brewers such as, say, Heineken, or
4 Interbrew, or you know, other big guys?

5 A. There may well be, and some of these, you
6 know, smaller dealers that aren't familiar to me, you
7 know, they may be involved in some kinds of
8 transactions, putting growers directly with other
9 brewers. I don't know, but I am sure there is some of
10 that that is going on.

11 Q. So I mean, if that were so, that would
12 indicate more atomization, as Dr. Fawell put it, than
13 would be indicated by just the four big dealers and the
14 two brewers buying directly. Wouldn't it?

15 A. Ask that question again?

16 Q. I said, if there was such activity where
17 there was a developing situation where some of the other
18 big international brewers such as Heineken and Interbrew
19 were even on a small scale, but a growing scale, doing
20 direct purchases from growers, that would indicate, you
21 know, a more developed group of buyers. Wouldn't it?

22 A. Well, I think it still comes down to the
23 fact that there is not -- the majority of the industry
24 is not capable of being able to operate under that
25 scenario, because you have a situation with Anheuser

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1 Busch where we sell raw hops to Anheuser Busch -- I am
2 speaking of myself. We grow them, we bale them, and we
3 ship them, and that is how Anheuser Busch takes them.
4 In other instances with other big breweries, they take
5 it in a finished product. So you then get into the
6 realm of having to process the product, have the product
7 put in a form that the brewery will accept, and I would
8 envision there is a lot more involved in that than what
9 we are involved in as an industry with Coors and
10 Anheuser Busch. So that kind of lends itself to either
11 somebody who has all of that capability, somebody who
12 has done it, and I am sure that there are people that do
13 buy and sell, and I think there is -- you know, I think
14 Leslie Roy has mentioned he does those things to a
15 degree so it can happen. But again, I consider that to
16 be a very small portion and it is not -- at this point,
17 anyway, a real viable way for us to operate.

18 Q. Thank you. Looking at 991.53(d), which
19 is the adjustment to allotment base that could occur
20 every five years by the committee...

21 A. Yes.

22 Q. ...the committee would do that and it
23 would be in accordance with a formula described by the
24 committee with the approval of the Secretary.
25 Obviously, that formula would have to be developed after

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1 the HMO was adopted. Right?

2 A. Yes.

3 Q. Hypothetically, for example, could that
4 formula be such that you could eliminate the bump that
5 aroma gets now from whatever percent it is below 10
6 percent on the allotment?

7 A. Could you ask that question again?

8 Q. For example, I mean, I could imagine a
9 lot of things that could be done with that, but could
10 one of the things that could be done, could it be that
11 you would eliminate the bump that aroma gets right now
12 on the alpha acid content from whatever percent it is up
13 to 10 percent?

14 A. So if I understand your question, if you
15 had that difference between whatever your alpha was and
16 aroma up to the 10 percent, and you were issued your
17 initial allotment based on that criteria, could the
18 committee come back and adjust all of the aroma bases
19 back to what they actually were?

20 Q. Yes, sir.

21 A. The way I interpret it, the bump in alpha
22 is a formula for determining the initial allotment base.

23 Q. Right.

24 A. This adjustment to allotment base, first
25 of all, you have to understand that anytime you do any

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1 kind of an adjustment, it has to be fair to all. So you
2 can't just pick out a certain few and either reward them
3 strictly or punish them strictly. You couldn't under
4 this -- first of all, you would never get it approved, I
5 wouldn't think, through the Department. But let us just
6 say that the committee says all left-handed growers are
7 going to get 100 pounds of base. Now, there is a few of
8 us would be really happy, but we wouldn't be fair to the
9 industry. If they said all growers will get 100 pounds
10 of base, that would be an adjustment. So the adjustment
11 has to be fair and equitable.

12 Q. Where is that requirement?

13 A. Well, I think -- and I am not totally
14 sure, but it has been the policy of the Department
15 that -- and I talked to Rod a little bit about -- Rod
16 Christiansen, a little bit about that, that you can't
17 just act arbitrarily in these types of instances.
18 Whatever you do would have to be a fair and equitable
19 distribution among all the growers, all the players, or
20 the Department wouldn't approve it.

21 Q. Well, I don't mean this to be pejorative
22 at all, but you would agree that since there is less
23 than 100 percent support of this proposal, that there is
24 at least a minority of growers that, you know, some
25 percentage of growers who don't think this is fair and

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1 equitable to do an HMO. Correct?

2 A. That is correct.

3 Q. And so probably -- I would think an
4 adjustment is probably not going to be seen as fair and
5 equitable to all perhaps, hypothetically at least.
6 Would you agree?

7 A. As long as that type of thing treated all
8 of the growers the same or gave them the same
9 opportunity, they would be treated -- everybody would be
10 treated fair and equitable given the formula. As long
11 as everybody has the same opportunity, they would be
12 treated the same.

13 Q. When I read this, you know, I can see
14 this as allowing such a change if a majority or, you
15 know, six out of eight of the committee members voted to
16 create a formula that would do that, and the Secretary
17 approved it, that would go into effect. Is that not
18 correct?

19 A. If the committee came up with an
20 adjustment to the allotment base, presented it to the
21 Secretary, and it was approved, yes.

22 Q. It could eliminate the aroma bump? If
23 the formula...

24 A. No, because not everybody got the 10
25 percent. If there was a grower who didn't get the 10

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1 percent bump that only grew alpha hops, he would be
2 treated not equitably. So I would say it wouldn't go
3 through.

4 Q. I am sorry to belabor this.

5 A. No problem.

6 Q. But let me -- under this provision, it
7 doesn't talk -- there is no language that I see about
8 fair and equitable. I just see language that says that
9 the committee will adopt a formula or prescribe a
10 formula, the Secretary will approve it, and that
11 formula, hypothetically, could eliminate the aroma bump.
12 And if that were voted on by the committee and approved
13 by the Secretary, it would seem like the allotment base
14 could be adjusted to reflect that.

15 A. First of all...

16 ***

17 ADMINISTRATIVE LAW JUDGE: You don't have to
18 answer that again unless you want to.

19 MR. GASSELING: Well, I will try a different
20 way. Maybe I can get it through and then we will
21 finish.

22 ADMINISTRATIVE LAW JUDGE: Okay.

23 MR. GASSELING: If at that point you have
24 allotment base, alpha base -- it is alpha base. It is
25 not aroma base, it is not -- so what you are saying,

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1 that the committee might decide to reduce everybody's
2 allotment by a certain number?

3 ***

4 BY MR. CARSWELL:

5 Q. No. I was saying that they would...

6 A. That is the only way it could happen.

7 Q. Well, I could see that you could
8 eliminate the formula for setting base so that varieties
9 with less than 10 percent alpha wouldn't get 10 percent
10 alpha treatment. I can see that happening under this
11 provision.

12 A. Once...

13 ***

14 MR. MONAHAN: I would like to object to the
15 testimonial question as asked and answered.

16 ADMINISTRATIVE LAW JUDGE: It is asked and
17 answered. Mr. Carswell, I know you are saying,
18 hypothetically, it could happen, but I think he has
19 fielded that possibility.

20 MR. CARSWELL: Okay. Let me ask a separate
21 question, if you don't mind.

22 ADMINISTRATIVE LAW JUDGE: You may.

23 ***

24 BY MR. CARSWELL:

25 Q. Under this provision, could there be
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1 major adjustments to the base in general?

2 A. If it was a consensus of the industry
3 that they recognized there was changes in trends of
4 production demand, whatever, the committee has the
5 ability to adjust allotments.

6 Q. Thank you, sir. And at that point, if
7 there was such an adjustment, it would take a majority
8 of growers as compared to -- right now, if one-third,
9 more than one-third of growers and more than one-third
10 of pounds oppose passage of this, it won't be enacted.
11 Is that correct?

12 A. You mean, the marketing order?

13 Q. Yes, sir.

14 A. Yes. It takes two-thirds by grower or by
15 volume.

16 Q. So if more than one-third of both oppose
17 it, it won't be passed. Correct?

18 A. Correct.

19 Q. And yet, if it gets passed, and there was
20 a major change to the adjustment -- to the base, which
21 more than one-third of growers would oppose, it would
22 take a majority of growers to get the act rescinded,
23 unless there was a referendum brought by the Secretary.
24 Is that correct? I said to get the act rescinded -- to
25 get the marketing order rescinded.

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1 A. It would take a majority, yes.

2 Q. Okay. Under 991.53(b)(1), where you talk
3 about setting the representative base -- I am sorry. I
4 will tell you, I don't even want to get into it. I am
5 sorry about that. I don't want to waste too much time.
6 I know we are all tired. On the additional allotment
7 base provision, 991.53(e), I was just curious why at
8 this point you don't have the rules established that
9 would be used for determining the distribution of
10 additional allotment bases. I would think that that
11 would be something that you would set up, you know,
12 before passage of the order, as compared to after it was
13 passed. It wouldn't seem to be something that would
14 need to change from, you know, one time to another.
15 Could you maybe give me some insight, give us some
16 insight on why that is not established now?

17 A. Well, the framework is established. It
18 goes 50 percent to new, 50 percent to existing, up to
19 one percent in a year where the salable is increased.
20 Beyond that, we don't know for sure what the initial
21 base allotment is. We don't know what percentage
22 actually would be set forth. This says up to one
23 percent. It could be less. We don't know right now
24 what criteria will be used to distribute the base. So
25 there is a lot of things that we don't know now that the

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1 committee will know and will be able to set up the
2 actual operation of this portion of the act at the time
3 that the act would be in effect.

4 Q. Well, you know the criteria to distribute
5 the initial base. Right? I mean, that is laid out
6 here.

7 A. Yes.

8 Q. But I thought you just said that you
9 didn't, but we do know that.

10 A. For the initial base, yes.

11 Q. Yes, sir. And I am just wondering why we
12 wouldn't have the rules set up for this -- maybe you
13 just answered me, but I...

14 A. Well, we do have the rules. You are
15 talking about the ultimate actual procedure of how we
16 move forward of distributing that new allotment. The 50
17 percent existing growers is a pretty simple thing, but
18 the new growers, that is where they would have to set up
19 the requirements to qualify, how many -- depending on
20 what was issued, how many growers would be selected, and
21 that is not our job to get into that particular part.
22 We were to put the framework together by which this
23 thing could be then fine tuned by the committee.

24 Q. And you mentioned earlier that you are
25 expanding, and so you would -- under certain scenarios,

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1 you would have to acquire base and that didn't trouble
2 you or didn't overly trouble you. Is that correct?

3 A. Yes.

4 Q. If you had less resources, if you were
5 maybe younger and, you know, didn't have the financial
6 wherewithal to acquire base, would it trouble you if you
7 had to buy base, and would it trouble you under this
8 system where you would have to acquire base?

9 A. Well, you are under the assumption we
10 have the financial wherewithal to do it right now.

11 Q. Well, if it doesn't trouble you, I...

12 A. I will explain why I don't have a problem
13 with it. I think it is a perfect environment for a
14 smaller producer to get bigger, and I will tell you why,
15 because right now we are a medium sized producer. We
16 have some producers that we have heard that have got a
17 lot more acres, a lot more ability because of
18 diversification and everything, to in one year by
19 themselves totally oversupply the market. So if I make
20 a decision to compete as it is right now and put
21 additional acreage in, they may well just bury me,
22 because they can overpower me and I have no real
23 recourse to fight that war. If there is an allotment
24 system, we have a pie, and right now I have a little
25 piece of that pie. Nobody can take that little piece

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1 from me unless I want to give it to somebody. If I want
2 to get a bigger piece of the pie, I can make that
3 decision to do that, and it will cost me something. But
4 you know what -- I now have this little bit bigger piece
5 of pie than I had before. Nobody can take that away
6 from me. If I want to get a little bit bigger, I can do
7 the same thing over and over again or I can get smaller,
8 but at least I have the ability to function with some
9 certainty that I will be able to produce and sell the
10 amount of my pie, depending on the annual salable, every
11 year. Nobody can trample on that. And to me, that is a
12 big, big stability factor. And for that, I think it has
13 a definite value.

14 Q. Tom, don't you think that this past
15 year's production is kind of indicating that hop growers
16 are acting rationally and that the market is getting
17 back into equilibrium?

18 A. No.

19 Q. I believe I have heard some numbers that
20 production is around 6.9 million or so, again this year,
21 somewhere around the 2002 levels when there was a
22 voluntary set aside. Would you agree with those
23 numbers?

24 A. Well, I think because of the crop failure
25 in Europe, as was stated before, we are more in balance.

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1 I am not convinced that we are in as much balance as
2 some other people think. I think we will find out in
3 the next few months, but the problem is -- and I think
4 the gentleman from Oregon alluded to it -- with the
5 capacity we have, the ability to produce so quick, the
6 free market, I agree, will bring this thing into
7 balance. It has been doing it. But the minute that
8 there is a slightest bit of chance that this market
9 turns, we are going to all try to jump on it like a bird
10 on a June bug. We are going to plant 1,000 acres for
11 500 acres of demand. Compounding that, when we have the
12 depletion of potential buyers, which has happened over
13 the last few years, it is nobody's fault. It has just
14 happened. It even puts more pressure on you to be that
15 guy that gets the sale because there is not eight or
16 nine people down the road waiting to buy your hops. So
17 the minute the market turns, starts up, everybody is
18 going to rush for that piece of business. The sad thing
19 is, even if you don't get it, you are probably going to
20 grow some because you are hoping you will get some. We
21 have done it, we have done it in the last 10 or 15
22 years, consistently. You just have to watch what
23 happens, and that is the problem.

24 Q. Well, what I kind of...

25 ***

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1 ADMINISTRATIVE LAW JUDGE: Mr. Carswell, hold
2 that thought while we change tape. It is 5:11.

3 ***

4 [Off the record]

5 [On the record]

6 ***

7 ADMINISTRATIVE LAW JUDGE: We are back on
8 record, Mr. Carswell, at 5:11. You may proceed.

9 MR. CARSWELL: Thank you.

10 ***

11 BY MR. CARSWELL:

12 Q. The way -- I mean, you know, I studied
13 this for a few months. You have been doing this for
14 years. But it seems to me that a lot of problem over
15 the past few years has been the development without a
16 reduction in acreage of the super high alphas. And the
17 increased amount, both here and in Europe and Germany,
18 for example. And the increased amount of alpha that has
19 been produced, and just too much has been produced,
20 which has created no incentive for forward contracting
21 or for, you know, less incentive. And because you have
22 had this flooded spot market where you can get alpha
23 hops at a very cheap price or alpha acid at a cheap
24 price. And it would seem that this adjustment that
25 seems to have been going on, and then helped by the

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1 European crop failure, but also helped by American
2 farmers reducing their production over the last few
3 years, and that you have a correcting market. And my
4 question is why don't you just let that happen, because
5 the free market is always going to work better than one
6 that is regulated and controlled?

7 A. Well, I disagree in this market. You are
8 correct -- see, we are talking about the introduction of
9 high alpha, the excess inventory produced. If you
10 really think about it, it is the same deal whether we
11 are producing too many acres of a cluster hop years ago
12 or too many acres of a high alpha today. The problem is
13 the overproduction. And that is what -- and I
14 appreciate you, you know, with your understanding that
15 overproduction is a major problem. I totally agree with
16 you that the free market will ultimately correct it.
17 Years ago, when we used to have long-term contracts,
18 prices were more stable, production was more stable, the
19 cycles were much longer in duration and not as -- and
20 this is how I saw it as far as my operation -- and not
21 as severe. So you contracted at levels you could
22 survive the low points. Today, that doesn't happen. We
23 don't have the ability to have these long-term contracts
24 so we are selling shorter and shorter years. When the
25 market does turn, there are fewer and fewer players, so

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1 you automatically jump on it immediately, even if the
2 price isn't what you think it should be, because you
3 know if you may not take it now, it may be gone forever.
4 Because one thing about hops, one pound too many of
5 hops, you may not be able to sell at all. Now, it may
6 be at 5 cents, 3 cents, I don't know, but for practical
7 purposes, when the market is oversupplied by one pound,
8 it is dead. So that is why I see some kind of control
9 as a way to stabilize that and allow a smaller grower to
10 get bigger, a bigger grower to get bigger, a medium
11 grower to get bigger, or smaller, as they desire, but
12 have some kind of an assurance that they have got a part
13 of the pie.

14 Q. If American growers -- one thing you
15 noted, they are becoming fewer, and that is unfortunate.
16 I guess consolidation is happening in just about every
17 industry because generally there are efficiencies in
18 consolidation. But with fewer growers, isn't it more
19 likely that you will have rational growers who won't
20 make the mistake of overproducing and who realize that
21 if they create a spot market or if they continue to
22 create a spot market, that it is just going to result in
23 lower prices?

24 A. Well, you would think that would happen,
25 but we seem to have a great history to show that that

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1 isn't going to happen.

2 Q. Also, I just wanted to, you know -- I had
3 mentioned this model of using -- and the dealers in the
4 room aren't going to appreciate me talking about this,
5 but using dealers more in a service capacity where they
6 provide a function but they don't buy the hops. You
7 have a direct relationship with the brewer and the
8 dealer provides the palletizing or extracting function,
9 perhaps a transportation function. Wouldn't that
10 possibly be another way to increase grower
11 profitability?

12 A. So what you are saying is have more
13 breweries be buying direct?

14 Q. Yes, sir.

15 A. I think if those breweries acted in the
16 manner that Coors and Anheuser Busch have, that would be
17 fine. I also think that the dealers provide a very
18 valuable service to the industry, so I think both
19 factions are important. Already now, some of the
20 dealers -- well, I think all of the dealers act in some
21 capacity as a processor/storer for breweries right now
22 on direct sales.

23 Q. Yes, sir, and I am not saying they don't
24 have a function. I am just saying that you would have
25 that further competition for your goods if you had those

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1 direct relationships and if you expanded those, and I
2 wanted to get your opinion on that, and it sounds like
3 you agree it could be helpful.

4 A. Well, the problem is that a large
5 majority of that other part of the industry has been
6 alluded to or come to the conclusion that they are
7 better off to buy on the spot market and better off with
8 overproduction, which constitutes lower prices. So I
9 would have to really think about what kind of market
10 situation that would create, whether it would create a
11 better situation than we have now or worse.

12 Q. Again, Mr. Gasseling...

13 ***

14 ADMINISTRATIVE LAW JUDGE: Mr. Carswell, I
15 don't mean to limit you, but I am going to have to.

16 MR. CARSWELL: I was just going to say, Your
17 Honor -- if I could finish?

18 ADMINISTRATIVE LAW JUDGE: If you can wrap
19 this up, that would be good.

20 MR. CARSWELL: Well, I was going to say,
21 again, Mr. Gasseling, thanks a lot for all the time and
22 I am sorry. I know it has been a long day. Thank you.

23 MR. GASSELING: No problem. Thank you.

24 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
25 Carswell. Any other questions for Mr. Gasseling from

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1 anyone? I know we have other provisions to cover, but
2 on this segment? All right. Let me see. Let us start
3 with Mr. Olson.

4 ***

5 BY MR. OLSON:

6 Q. How are you holding up, Mr. Gasseling?

7 A. Why are you picking on me, Mr. Olson?

8 Q. Well, that is a tough question. I guess
9 I want to discuss some of this -- the procedure for the
10 initial allotment of base and perhaps go through a few
11 hypotheses.

12 A. Okay.

13 Q. What about situations where the father,
14 for example, if there is 800 acres, and a father has
15 transferred 700 to his son -- and you can use different
16 years but, you know, in terms of base allocation, how
17 would that be handled in that situation?

18 A. Do you mean the calculation of the
19 original base allotment?

20 Q. Yes. I am trying to explore how many
21 possible situations may occur where there might be
22 duplication of base allocation from the same acreage.

23 A. I don't foresee that could happen at all.

24 Q. And in the scenario that we were just
25 talking about, if the original farm is 800 acres -- and

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1 I know there is adjustments for production and those
2 sorts of things, but just to keep it simple, and let us
3 say in year -- in 1997, there were 800 acres. A father
4 sold 700 of those acres to his son in 2000. The father
5 remains a producer, the son is a producer. What basis
6 would the base be allocated for each business entity?

7 A. I have to find this section.

8 Q. I didn't intend for you to have to...

9 A. I would think that the way it is set up,
10 if that grower were a grower in '97 of 800 acres, and he
11 sold a portion of that to somebody else -- it doesn't
12 have to be his son; let us say to a totally different
13 entity. That entity would also, having no tie, I would
14 imagine would have ability to apply for allotment
15 because he is a producer.

16 Q. What about a situation where you have --
17 using 800 acres again, that the entity became an LLC or
18 a change in terms of, you know, change to some other
19 business entity, but had the same controlling person
20 throughout that period of time, what would be the -- I
21 think the Judge is going to ask for more specificity
22 here, I think.

23 ***

24 ADMINISTRATIVE LAW JUDGE: No. Go ahead. I
25 just want you to say that LLC means limited liability

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1 company or something of the like. Is that right?

2 MR. OLSON: Thank you. Yes, limited liability
3 company.

4 ***

5 BY MR. OLSON:

6 Q. But anyway, to repeat my question, if you
7 have a situation where a business entity starts as a
8 corporation, you know, reorganizes as an LLC, what
9 happens in those kinds of situations?

10 A. Well, I think you would have to go back
11 to the definitions, because it says, you know, you are
12 talking about a producer, so you would have to go back.

13 Q. Would it be reasonable for us to refer to
14 the definition under producer...

15 A. And then the person -- then you would
16 have to go to person. Because a producer is synonymous
17 with a grower and means any person -- or a producer,
18 excuse me, is synonymous, any person. So if you go up
19 and look at person, it means individuals, partnerships,
20 corporations, association, or any other business unit.
21 I think, ultimately, it would be the decision of the
22 committee, but in that instance, you would ultimately --
23 it would be some other entity and so it would be
24 considered to be the same and it would have one -- in my
25 opinion -- allotment base issue.

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1 Q. And in terms of the evidence needed for
2 the committee to give to a producer his initial base, if
3 information relating to the alpha acid isn't available
4 for a particular grower, what methodology would you
5 suggest that the committee apply for giving that person
6 base?

7 A. Well, of course, I couldn't speak for the
8 committee, but my feeling would be -- and this has been
9 discussed because there were some growers that mentioned
10 that they might not have that data available for a
11 certain year; let us say, 1997, because that dealer or
12 handler they were selling to is no longer in business.
13 I think those records in those cases have been found and
14 they are available, but the concept, the idea, would be
15 that if all else failed, you could use the -- calculate
16 an average alpha value for that variety for that year
17 and utilize that number in the calculation for that
18 year. But it would ultimately be the committee's
19 decision to really fine tune that. I am just giving you
20 the opinion how I would see a possibility.

21 Q. You are suggesting the committee might
22 have some additional authority to address certain
23 hardship situations in addition to acts of God?

24 A. No. What I am saying is that if you read
25 in there the producer is to supply the committee with

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1 that information, the towns, the alphas, and so forth,
2 to justify the computation for the initial allotment
3 base. Okay? If, let us say, a producer had information
4 which would be the alpha analysis, the pounds and so
5 forth, for all years except one, and for whatever
6 reasons didn't have -- he or she will have -- I can't
7 imagine that they wouldn't have the pounds by variety.
8 So what we are really talking about that they wouldn't
9 have is the alpha value for that particular portion of
10 their crop. They delivered part of it to dealer A, and
11 he is out of business, his warehouse burned up, his
12 office burned up, there is no records. Then the
13 committee, I think, would have to look at what
14 alternative is there to the official, and one thing that
15 it might do, I am just saying, speculating, use the
16 state average -- or those varieties for that year, and
17 allow the producer to use those numbers to calculate his
18 allotment.

19 Q. Do you know if there are any situations
20 where certain growers have used methodologies on
21 calculating alpha acid that would normally result in a
22 smaller percentage? And if so, do you have any
23 suggestions on how that should be addressed?

24 A. Well, as far as I know, here in the U.S.,
25 we use virtually one method for all our U.S. hops. All

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1 of the brewing values that I am aware of are done by
2 Spectral, as far as what we get as information, every
3 analysis that I have had since 1997, everything when I
4 was involved with Haas was Spectral. So for us here,
5 that is not so much an issue. I think if there were a
6 different analysis, there is a way to calculate it back
7 to Spectral, but I think we are talking here on a
8 Spectral analysis.

9 Q. But there would be a reasonable method
10 could be established for converting a separate measuring
11 method back to Spectral?

12 A. Well, you know, I am not an expert in
13 there, but there are formulas because I am sure when
14 you -- and you might ask somebody who is a lot more
15 expert, some of the dealers and stuff, that you have to
16 deliver in some parts of the world based on one analysis
17 and some place based on another, and I have to believe
18 that there is a formula that you can calculate that will
19 take one method and calculate it back to what it would
20 be under the other method.

21 Q. You would believe that such an adjustment
22 would be appropriate?

23 A. Well, we have said in here it has to be
24 Spectral so everything would have to be based on that,
25 because you can't have all different -- totally

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1 different methods which would give totally different
2 numbers. You have to stick with one method and that is
3 the method that has been put in here.

4 Q. We are going to take a chance that we can
5 go back to handle for just a minute or two. There was
6 some testimony earlier that talked for the need that
7 when -- there is no coaching going on now. Is there?

8 A. No. I just wanted him to put it up
9 there, because I don't have it here.

10 Q. Okay. Good suggestion.

11 ***

12 MR. MONAHAN: Coaching doesn't work with him.

13 ADMINISTRATIVE LAW JUDGE: Now, you have got a
14 revised one now. Don't you?

15 MR. MONAHAN: We are going to...

16 ADMINISTRATIVE LAW JUDGE: Oh, yes. I guess
17 we solved the problem with Dr. Tweeten's mic and we made
18 it Mr. Olson's problem.

19 MR. MONAHAN: Your Honor, Proponents have
20 amended the provision from this morning. I think it was
21 this morning. It has been a long time ago. I know that
22 there were -- I took some notes as to some suggestions
23 from Mr. Carswell -- I believe what Mr. Roy is about to
24 display on the screen.

25 MR. ROY: It is still the unmodified version.

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1 It is the same one we had this morning, if you want to
2 look at that?

3 MR. MONAHAN: Well, there was a modification
4 made this morning after the question about shipping
5 outside of the area, and I believe that was displayed.
6 Why don't we give it a shot.

7 MR. ROY: Okay. Let me see here.

8 ADMINISTRATIVE LAW JUDGE: Okay. But do you
9 have any hard copies?

10 MR. ROY: No.

11 ADMINISTRATIVE LAW JUDGE: All right. So the
12 only hard copy we have is Exhibit #43. That is not yet
13 modified. Do you want a copy of that, Mr. Gasseling?
14 Does that give you any help at all? They will have
15 something up on the screen, also.

16 MR. GASSELING: I thought I had it, but maybe
17 I...

18 ADMINISTRATIVE LAW JUDGE: I can hand you this
19 one. While we are getting that up on the screen, shall
20 we talk about how late you want to go tonight? I do
21 want to get in Mr. Annen's testimony tonight. He did
22 say he would be here until 10:00 in the morning, but I
23 would like to hear everyone else's suggestions for how
24 you want to proceed.

25 MR. MONAHAN: Your Honor, from the Proponents'
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1 perspective, I think it makes sense to have Mr. Annen go
2 this evening. We don't anticipate an extended cross
3 exam. I would hope we don't revisit too much length on
4 direct exam. I think it is entirely plausible that we
5 could finish with both Mr. Annen and the completion of
6 Mr. Gasseling's testimony regarding the committee
7 functions.

8 ADMINISTRATIVE LAW JUDGE: All right. Mr.
9 Moody and Mr. Carswell, are you in agreement that we
10 stay until we finish not only Mr. Gasseling's testimony
11 but also Mr. Annen's?

12 MR. CARSWELL: Yes, Your Honor.

13 MR. MOODY: Yes.

14 ADMINISTRATIVE LAW JUDGE: All right. And is
15 USDA on board for another late night?

16 MS. DESKINS: We can do it tonight, but
17 tomorrow night, we have to end at 5:00, so this would be
18 the last night we could go late.

19 ADMINISTRATIVE LAW JUDGE: All right. Let us
20 do then. With regard to Mr. Annen's suggestions, we
21 have marked those as Exhibit #24. Those were
22 distributed to people who were at Portland, but there
23 may be others of you here who would like to see copies
24 of that before Mr. Annen takes the stand. Is there
25 anyone who could volunteer to make us some additional

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1 copies of Exhibit #24? Mr. Annen, bless your heart.
2 Did you bring them?

3 MR. ANNEN: Yes, Your Honor.

4 ADMINISTRATIVE LAW JUDGE: Oh, bless you.
5 Would you take this time to distribute those, and I
6 would like everyone to raise his hand that would like a
7 copy, and we will go off record while you do that and
8 take a 10-minute break. Please be ready to go at 5:45.

9 ***

10 [Off the record]

11 [On the record]

12 ***

13 ADMINISTRATIVE LAW JUDGE: We are back on
14 record at 5:51. I am going to direct Mr. Annen to
15 distribute copies of exhibits that he will be presenting
16 so that that will have been done before we resume with
17 Mr. Gasseling. And some of you already have Exhibit
18 #24, which was distributed in Portland, but we now have
19 additional exhibits, so I want to tell you what those
20 are, and then raise your hand for Mr. Annen to give you
21 a set, even if you already have 24 from Portland, so
22 that you will have these additional ones. Exhibit #48
23 is a letter from Mr. Annen dated October 23, 2003, but
24 he didn't actually prepare that today. His computer put
25 the current date on it when he printed it out, so that

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1 was previously submitted, and he will testify about
2 that. Exhibit #49 has a date stamp, received 7-22-03,
3 and that is a letter to Robert Keeney, Deputy
4 Administrator of the Agricultural Marketing Service.
5 And Mr. Annen will indicate that Mr. Keeney was able to
6 locate that letter so that he could provide a copy.
7 Exhibit #50 is a letter to Mr. Annen, dated October 21,
8 2003 from the Hop Commission of Oregon. And #51 is a
9 letter dated July 18, 2003 from Mr. Annen to the USDA.
10 So he will testify about all of this, but I just wanted
11 you to realize that when you raise your hand to get a
12 packet, you will be getting more than just Exhibit #24.
13 So now, if you will raise your hand so that Mr. Annen
14 can begin to distribute these packets? We will go off
15 record while he does that.

16 ***

17 [Off the record]

18 [On the record]

19 ***

20 ADMINISTRATIVE LAW JUDGE: Thank you. We are
21 back on record at 5:55, continuing with Mr. Gasseling's
22 testimony, Mr. Olson.

23 MR. OLSON: Your Honor, with your permission,
24 I would like to pass the mic to a colleague of mine who
25 needs to leave shortly.

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1 ADMINISTRATIVE LAW JUDGE: You may. Dr.
2 Hinman.

3 MR. HINMAN: Yes.

4 ***

5 BY MR. HINMAN:

6 Q. Mr. Gasseling, we have got a situation in
7 the marketing order language here, and I just want to
8 draw on your expertise just to -- as Ms. Finn indicated
9 earlier, some of our questions are really to just
10 building a general economic profile of the industry. So
11 I have one question actually just based on terminology
12 that I see in different publications. The word "alpha
13 dosage" -- is that the same as hopping ratio or not? Or
14 can you tell me what the phrase "alpha dosage", which I
15 have seen in some publications?

16 A. That would be the same as the hopping
17 ratio.

18 Q. Okay. Thank you. The second question
19 relates to various witnesses have talked about, you
20 know, a couple of times in extracting, we actually heard
21 some prices put on those last night. And if a grower
22 was to take their bales and want to make them into
23 pellets or extract, we actually heard some figures
24 quoted. And for pellets it was 15 to 25 cents per
25 pound, and -- I believe -- and extract 55 to 65. And do

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1 you concur or disagree that those would be, at the
2 moment at least, representative figures that a grower
3 would have to pay?

4 A. I would agree.

5 Q. Okay. The third issue is that you gave
6 yourself as an example of a mid sized grower, I believe,
7 and in that regard, could you give some rough figures in
8 terms of acres, or whatever, pounds, of a small, mid
9 sized and large grower in this industry, hop acreage?

10 A. I would say large would be, let us say,
11 1,000 and up, mid sized in the 500 range, and small
12 would be the 200 range, 100 to 200 range. That is how I
13 would categorize it.

14 Q. Okay. Thank you. I would like you to
15 take Exhibit #5, which is the statistical overview
16 packet that I handed out in the first day, and if you
17 could turn to page 2 of that, and with that, I am going
18 to ask you to indulge me while I send you back to math
19 class one more time. And the two columns I would like
20 you to look at are the acreage figures. Look at the
21 last four years of acreage, and in the last -- this is
22 on page 2, so this is 1999 through 2002 -- the last four
23 years, the figures on total value. I just want you to
24 look at those for a minute, because I want to ask you
25 something about that. Now, I have actually done some

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1 computation. I just want to give you some -- help you
2 give me some perspective on that. If you divide the
3 total value by the acres for '99 through 2002, I get a
4 range of 3,200 to 3,900 per acre. And my question is --
5 I am getting, you know, my small farm or large farm
6 equation in through the back door here. I am trying to
7 get a more general idea, and if you divide that \$750,000
8 and divide it by those figures to get the acreage --
9 given those annual revenues, the acreage they would give
10 you, approximately \$750,000 in those four years, range
11 from 194 acres to 236 acres. Now, the reason I ask that
12 is I am trying to build, you know, representative ways
13 to explain the industry. Does that sound reasonable
14 or -- that is an average, obviously, across aroma and
15 alpha. Is that a reasonable figure sounding to you? Is
16 there a better way that you could characterize it, and
17 could you characterize it maybe differently if it was
18 perhaps mostly aroma or mostly alpha in that regard? I
19 am trying to, again, how many acres to achieve, you
20 know, in a recent typical year, \$750,000 in gross sales.
21 Was the question clear?

22 A. Yes, it was. If you took a 200-acre
23 grower, growing a 1,400-pound per acre hop, let us say,
24 7 bales, if I have done the math right, that is 280,000
25 pounds produced. And given this year's scenario, and

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1 that would be, let us say, aroma. Given that scenario,
2 at \$3 a pound, you are looking at \$840,000. So
3 somewhere, if you are an aroma grower at that yield,
4 somewhat less than 200 acres would get you to the
5 \$750,000. Now, I have to figure the other one.

6 Q. Thank you.

7 A. Sorry I am so slow, but it is a little
8 bit late in the day.

9 Q. I can see the tension in the room is
10 building.

11 A. Well, if you took a 300-acre grower that
12 grew a 2,400-pound per acre hop, 12 bales to the acre,
13 that would give him 720,000 pounds. And if you took
14 just, say, \$1 a pound, because you would be looking at
15 720,000, there are contracts out there that are being
16 delivered now at \$1.10, \$1.15, so you would be pretty
17 close.

18 Q. Okay. That was extremely helpful, and
19 thank you for your quick math.

20 A. Not quite so quick, but it works.

21 ***

22 MR. HINMAN: That concludes my questions and
23 now I will pass the microphone on here. And I think,
24 Ms. Finn, this time I do have a machine which I have to
25 carry home.

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1 MR. GASSELING: Is this your exhibit?

2 ADMINISTRATIVE LAW JUDGE: Give it to Kearney.

3 MR. GASSELING: Okay.

4 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.

5 Gasseling. Mr. Broadbent, will you ask the next

6 question, or back to Mr. Olson? Mr. Olson.

7 ***

8 BY MR. OLSON:

9 Q. Well, that was a nice break for you, Tom.
10 Okay. Back to the definition of handle -- I am not sure
11 if we actually received testimony or it was just some
12 statements across the desk from the attorneys, but there
13 was a question regarding the situation where reserve
14 pool hops are pelletized or extracted into alpha acid,
15 the concern that that would constitute handling and
16 create a situation where a handler would be in violation
17 of handling reserve pool hops. The language, which I
18 believe was discussed, was that the preparation of raw
19 hops for the reserve pool shall not constitute handling.
20 And there is a question of where that should be. And I
21 guess with that reference, my question to you would be
22 whether you believe it would be appropriate to amend the
23 current definition of 991.08 Handle to add a (6), which
24 would read as follows, "The preparation of raw hops from
25 the reserve pool shall not constitute handling" --

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1 whether you believe that that would be an appropriate
2 addition to the definition of handle?

3 A. I think that would definitely clarify it.

4 Q. Regarding hops in the reserve pool...

5 ***

6 ADMINISTRATIVE LAW JUDGE: Mr. Olson, would
7 you also look at 991.56(c)?

8 MR. OLSON: Yes. I have a star there, Your
9 Honor.

10 ADMINISTRATIVE LAW JUDGE: Could you inquire
11 about whether the very same sentence might go there or
12 did you have a suggestion as to what might happen to
13 that provision?

14 MR. OLSON: While I may be under oath, I
15 certainly don't have a suggestion.

16 ADMINISTRATIVE LAW JUDGE: All right. Go
17 ahead then.

18 ***

19 BY MR. OLSON:

20 Q. And back to the definition of handle,
21 with the additional suggestion that you just made, there
22 will be a situation where hops that have been pelletized
23 or an alpha acid content will be -- not yet been
24 handled, but will be stored. Would it be your opinion
25 that the first paragraph in handle, which should be

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1 added so that the sale of alpha acid would also
2 constitute handling? And I will read the paragraph.
3 "Handle means to prepare raw hops for market, acquire
4 raw hops from a producer, or sell hops." And I will ask
5 whether you believe that two additional, three
6 additional words should be added here -- or alpha acid
7 to an end user or foreign purchaser -- actually, let me
8 start over again. I don't like where that was added. I
9 will start from the beginning. Handle -- and what I am
10 asking is whether you believe the term "alpha acid", the
11 selling of alpha acid, should be added to this
12 paragraph. And maybe that question itself...

13 ***

14 MR. MONAHAN: Mr. Olson...

15 ADMINISTRATIVE LAW JUDGE: Mr. Monahan.

16 MR. MONAHAN: Thank you, Your Honor. As soon
17 as we addressed the fact that preparation of raw hops
18 from reserve pools should not be handling, I immediately
19 thought that in the top line of 991.08, we might just
20 delete the word "raw" from the provision that says
21 acquire hops from a producer. If we take out raw, then
22 under the definitions, that would include hops and all
23 hops derivatives, pellets, acids, whatsoever. So
24 acquiring hops from a producer. Of course, that makes
25 us change paragraph 3 as well. I should announce that

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1 right now Rod Christiansen is at his computer working on
2 this very provision, trying to clean up the gaps that
3 have been identified in today's Hearing.

4 ***

5 BY MR. OLSON:

6 Q. Perhaps the simplest way at this point,
7 what I would just ask, Mr. Gasseling, if you believe in
8 the best written manner that we are able, that we add
9 the concept of the selling of alpha acid or pelletized
10 hops in the first paragraph, constitute handling?

11 A. I think we should do that.

12 Q. There was some testimony earlier about
13 the 991.52, about whether the term "purchase" which is
14 in there twice, both (a) and (b) is appropriate. With
15 these changes, do you believe that the term "handle"
16 would meet the intent of what is being considered there?

17 A. I think that would work.

18 Q. In 991.55 Identification...

19 A. Yes.

20 Q. ...there is discussion or language, as I
21 understand it, which talks about the identification --
22 well, each producer shall under supervision of the
23 committee identify each variety of alpha acid by October
24 15th of each year. Is this identification to be required
25 on all forms of hops, pelletizing, or alpha acid?

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1 A. Well, the way I interpret that is that
2 when the hops are harvested, you would identify at that
3 point in time at harvest the variety and the alpha acid
4 of that variety. Because what you are trying to
5 accomplish is to get the information of the number of
6 pounds by variety, by percentage alpha, to arrive at the
7 amount of alpha produced.

8 Q. Is this more of a reporting requirement
9 then, or is it both?

10 A. It is both. You would have to report
11 this to the committee to identify all these, but this
12 was also to be utilized for the calculation of the
13 production.

14 Q. If an order was in effect, how do we know
15 that the hops in a particular field, what variety of
16 hops are in that field?

17 A. Sometimes that is a really great
18 question, but...

19 ***

20 [Off the record]

21 [On the record]

22 ***

23 ADMINISTRATIVE LAW JUDGE: We are back on
24 record now at 6:13. Mr. Olson, would you back up, and
25 with regard to the identification section 991.55, could

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1 you go back to your question before the last one -- when
2 you asked if it is meant to be a reporting provision?

3 MR. OLSON: Thank you, Your Honor.

4 ***

5 BY MR. OLSON:

6 Q. With that hint, is the provision 991.55
7 Identification -- are the authorities in there meant to
8 be an identification and a reporting requirement?

9 A. I would say yes.

10 Q. And the follow-up question had to do with
11 how a committee could know what the varieties of hops
12 are in a particular field, and what I am wondering is
13 whether there is a potential for growers to misrepresent
14 varieties so that they could use a different alpha acid
15 factor in calculating the number of hops they could ship
16 under, or deliver, or be received by handlers under a
17 salable percentage?

18 A. Well, the way it is set to work here, the
19 alpha acid factor is a three-year average. So what your
20 actual alpha acid percentage is for that given year is
21 not relevant. So the reason to try to taint that
22 average doesn't make any sense, to me anyway, first of
23 all, because you are not using that year's alpha
24 average. It is a three-year average that is set.
25 Secondly, as I said, the varieties are stenciled on the

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1 bales, so when you deliver them, you get the information
2 as to what the variety is, and then when you get the
3 analysis, it will be the analysis for that variety. But
4 the actual alpha acid that year is not going to be an
5 issue for your deliver, because you are already going to
6 have calculated what pounds you can deliver.

7 Q. Would it be to a grower's advantage if
8 they had a variety that was at 14 percent alpha, that
9 they deliver it under another variety name that might
10 have a 10 percent alpha and, therefore, be able to
11 deliver more hops?

12 A. Ask that question again? As Mr. Roy
13 said, it is getting late.

14 Q. I think you are getting back at me, Tom.
15 Well, I am just wondering, in terms, since as I
16 understand it, the proposal envisions various alpha acid
17 factors for different varieties of hops. If a grower --
18 does a grower have an incentive to, if he has a variety
19 of hops that have an alpha acid factor of 18 percent --
20 I really don't intend this to be a math question.

21 A. No. I am just trying to figure it out
22 myself.

23 Q. Sure. And would that -- well, let us
24 give an example of where there are two fields. There is
25 one -- there is a variety that has 18 percent and there

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1 is another variety that has 12 -- in the field right
2 next to it that has 12 percent alpha. Is there an
3 advantage, an incentive, for the grower to deliver more
4 of the 12 percent variety, 12 percent alpha variety, and
5 therefore, be able to deliver more product? Is this an
6 area where -- I mean, I guess...

7 A. So what you are saying is the alpha acid,
8 actually, is a 14 percent, and he delivers it under a
9 different variety that the factor is 10 percent, so he
10 could, in fact, deliver more pounds under that 10
11 percent than he could under the 14 percent?

12 Q. Yes. I used the 18 percent, but I think
13 you are with me in terms of the question.

14 A. Well, I think, you know, it would be
15 similar to having the 10 percent factor and a growing of
16 14 percent of that variety, he would, in fact, deliver
17 more actual pounds than the calculation is, legally. If
18 they did mislabel, I think then it would follow that
19 they could deliver more pounds. The total pounds
20 wouldn't change. They would just deliver more under
21 kind of a false pretense, but I think that falls under
22 then mislabeling. I would imagine that then, again, you
23 have got the situation with the dealer who takes the
24 possession of those hops. The minute they do an
25 analysis of them, and I will give you an example. If

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1 they do an analysis of a CTZ and then they are delivered
2 as a galena, the minute the dealer does the analysis,
3 they are going to know right off the bat there is
4 something wrong with those hops; they are not a CTZ.
5 Now, this is where it takes two to tango. It would take
6 the dealer or the handler of that product to stamp that
7 as delivered for what it is. I just don't see that
8 happening. There is a footprint on all of these
9 varieties now. They can tell one variety from another.
10 Years ago, nobody paid attention to it, so it could have
11 been all kinds of things, but right now, product in many
12 cases, they know what is in that -- what that hop is,
13 just be its chemical makeup. But under this scenario,
14 that could happen, somebody could do that, but it would
15 be awful hard to get away with for very long.

16 Q. You used the term "footprint"?

17 A. Yes.

18 Q. Can you add anymore defining
19 characteristics on what footprint might mean? Is
20 there...

21 A. Well, I will give you an example. Right
22 now there are varieties that have -- somebody help me
23 with the word -- the varieties that you have to pay for.

24 ***

25 MR. MONAHAN: Proprietary.

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1 MR. GASSELING: Yeah, and you have to pay a
2 royalty. So you could, theoretically, get some of those
3 roots and grow and sell those hops, but they can do a
4 chemical analysis on those hops and determine that those
5 hops are, in fact, that particular variety. They have
6 distinct different characteristics that they can now,
7 through analysis, actually determine. So we can break
8 down by variety.

9 ***

10 BY MR. OLSON:

11 Q. That kind of information then could be
12 used by committee staff people to monitor whether hops
13 are being handled appropriately?

14 A. Well, you know, the committee could do
15 that, but I think that it does -- it still comes back to
16 the premise that if somebody tries to, you know, do
17 something illegal, they are going to ultimately get
18 caught, because somebody is going to catch them, and
19 they are going to notify the committee. I would
20 envision that if somebody tried to deliver a hop that
21 wasn't what was contracted, a different variety to the
22 dealer, the dealer is not going to accept those hops,
23 and would notify the appropriate people that this was
24 taking place. And at that point, the committee would be
25 authorized to take whatever action was necessary to

1 correct the situation.

2 Q. I know that I should know where this is,
3 but can you refer me to that section of the proposed
4 order where it specifically authorizes the committee to
5 require identification? I recognize under 991.55, it
6 talks about, you know, shall identify each such variety,
7 but is that the section where the committee has
8 authority to establish marking and identification
9 requirements, or is it contained somewhere else in the
10 proposal? I guess my question is, under identification,
11 it does say that each producer is required to identify
12 each variety, but I am trying to tie that into a
13 requirement that each bale or each barrel should have
14 certain marking requirements, or if there is authority
15 for the committee with approval of the Secretary to
16 establish such requirements, where that would be.

17 ***

18 ADMINISTRATIVE LAW JUDGE: Ms. Brulotte, I
19 would like to have this on the record. Have I sworn you
20 in yet?

21 MS. BRULOTTE: I don't think so.

22 ADMINISTRATIVE LAW JUDGE: All right. Let me
23 do that at this time. If you would state your full
24 name, please, and spell it?

25 MS. BRULOTTE: Reggie Brulotte, R-e-g-g-i-e,
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1 B-r-u-l-o-t-t-e.

2 ADMINISTRATIVE LAW JUDGE: Would you raise
3 your right hand, please?

4 ***

5 [Witness sworn]

6 ***

7 REGGIE BRULOTTE,
8 having first been duly sworn, according to the law,
9 testified as follows:

10 BY ADMINISTRATIVE LAW JUDGE:

11 Q. All right. And identify yourself briefly
12 and then respond, if you will, to Mr. Olson's concern.
13 It is back on now -- it worked for a minute.

14 A. The State commissions, I believe, already
15 require that each bale has the grower number, the year,
16 the lot number, and the variety stenciled on them, so I
17 don't know if it needs to be required again through the
18 marketing order.

19 ***

20 MR. GASSELING: Well, it states under the
21 identification, under (b), what -- shall include the
22 name of the producer, the variety of hops, the net
23 weight, lot number, and such other information as the
24 committee -- as may be required by the committee. So
25 the committee would set that criteria up for exactly

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1 what was necessary.

2

3

THOMAS W. GASSELING,

4

having previously been duly sworn, according to the law,

5

testified as follows:

6

BY MR. OLSON:

7

Q. So your interpretation of this provision

8

is that the committee would have the authority to

9

establish such marking -- well, (b) marking requirements

10

on all bales, all various containers of extract and -- I

11

recognize that there are some requirements under the

12

State commissions but, of course, that isn't directly

13

relevant to whatever authority this committee may need.

14

A. Well, the way I interpret this, that we

15

are not talking about following this product all the way

16

down the line to Timbuktu. What we are talking about is

17

that at the time of harvest, the producer is required to

18

identify each variety, and under that identify the name

19

of the producer, the variety of the hops, the net

20

weight, the lot number, and such other information.

21

That identification or name of producer can be the

22

grower number. It has a lot number. They are weighed.

23

All of that information is, as I take it, a requirement

24

to be reported to the committee.

25

Q. And these references that you make to lot

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1 numbers, that all comes from some inspection requirement
2 established under the State of Washington?

3 A. Well, all bales have lot numbers. All
4 bales are weighed. They all have variety -- that are
5 put in bales, they have variety put on them.

6 Q. I don't want to beat anything close to a
7 dead horse. I am not suggesting that you are one. I
8 just don't see with clarity here the authority of the
9 committee to require that...

10 A. It says the producer shall, under the
11 supervision of the committee, identify each variety.

12 Q. And your understanding is identify each
13 variety would include marking lot numbers and any other
14 information?

15 A. Well, then the second thing says
16 identification, which I take as identify what -- you
17 have to identify, and what is the identification -- that
18 would be section (b). That is how I would interpret it.

19 Q. Now, reserve pool hops and reserve pool
20 extract, reserve pool pelletized hops...

21 A. You don't know that until you actually
22 get the original analysis of whether or not they are
23 pool hops or not. Once you have all this information,
24 you can calculate how much excess or lack of excess you
25 would have.

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1 Q. I guess I was just thinking of it in
2 terms of identification, the committee would have the
3 ability to -- this question, would they have the ability
4 to require that hops kept in the reserve be identified
5 in some manner so that the committee can verify --
6 identify the product?

7 A. Well, there would have to be some kind of
8 identification so that you could track the product.
9 There would have to be some kind of identification.

10 Q. Then if I understand your testimony, you
11 believe that there should be authority for such
12 requirements to be recommended by the committee and
13 approved by the Secretary?

14 A. I believe there is in here.

15 Q. Thank you. There is a couple references
16 in 991.54(b) where it references a committee shall
17 establish rules and regulations. Would -- is it your
18 belief that including with approval of the Secretary
19 would be an appropriate change?

20 A. Are you talking...

21 Q. 991.94 -- excuse me -- 54(b).

22 A. Okay.

23 Q. Just an example, the committee shall
24 establish rules and regulations describing the
25 information to be submitted on this form. There is also

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1 a question of whether that should be -- I guess the only
2 question would be the -- does the committee have
3 authority to establish rules and regulations without the
4 approval of the Secretary?

5 A. Well, you know, I take this to apply to
6 the allotment based form that they are going to put out
7 to the grower. I would think it would be, quite
8 frankly, a waste of time to burden the Department with
9 the approval of that particular form in that sense. I
10 mean, it is a pretty -- there is not a lot you can do to
11 screw that up.

12 Q. Perhaps a different term than "rules and
13 regulations" might be appropriate? The committee may
14 prescribe such information?

15 A. Well, yeah. I think that -- I,
16 personally, wouldn't have a problem with it. I just
17 think sometimes when we did go through there, there was
18 questions about "with the approval of the Secretary" and
19 sometimes some of this stuff is, quite frankly, I think
20 would just be a real burden to have to go back and every
21 time you want to change a form have to take it and have
22 it revised through the Secretary. But...

23 ***

24 MR. MONAHAN: Mr. Olson -- Brendan Monahan for
25 Proponents Committee. We recognize, I think, there are

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1 some questions of Mr. Christiansen that the term or the
2 partial phrase "rules and regulations" I think appears
3 inconsistently. Sometimes the rules and regulations are
4 to be approved by the Secretary. Sometimes it is
5 unclear. It probably deserves clarification, and if it
6 is not something to be approved by the Secretary, it
7 should probably be referred to as policies and
8 procedures or prescribed forms.

9 MR. GASSELING: And I think that was the
10 intent. I don't think the intent here is to circumvent
11 anybody. It is just that there are some procedures and
12 things that take place that, you know, it is kind of
13 like -- well, I won't say what.

14 ***

15 BY MR. OLSON:

16 Q. Well, any interest in removing burden
17 from the Department is always greatly appreciated. The
18 clarity is, also. One last area, if I could get a
19 couple of examples regarding the issuance of new base,
20 or additional base to new and existing growers? Can you
21 give me just a little bit of background on how you would
22 envision that base being distributed and the
23 methodology?

24 A. Under (e), Additional Allotment Base, or
25 Adjustment to Allotment Base?

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1 Q. Additional.

2 A. Okay. I would envision that working in
3 the following manner. In years where the salable was
4 stable, or level, or decreasing, the committee would
5 have the ability or the option not to put out additional
6 base. In the years when the salable is increasing, the
7 committee would have the ability to make additional
8 allotment up to one percent of the total available. So
9 they could say one percent -- this year, we will make
10 one percent of the base allotment available. So one
11 percent of the total, you would get a number; 50 percent
12 would go to existing growers and 50 percent would go to
13 new growers.

14 Q. And for the new growers, would there be a
15 determination made by the committee on what the
16 committee believes a minimum economic unit is?

17 A. I think that is the idea of it and that
18 is how they do it under the mint marketing order. They
19 have calculated a minimum economic unit and then based
20 on that they figure how many new growers that would
21 facilitate. And if there is more applications, then the
22 amount -- there is some kind of lottery drawing system.

23 Q. And in terms of the other 50 percent to
24 existing producers, what kind of methodology -- you
25 know, would it be possible for distributing that base --

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1 would it be reasonable for those existing growers who
2 aren't at a minimum economic unit, for example, to
3 receive that allotment?

4 A. I am not quite sure -- I can't remember
5 for sure how they divide that base for additional
6 growers in the mint deal. I just know we get a few
7 pounds every year added onto our allotment. Again, I
8 think it comes down to a situation of is it fair and
9 equitable to all of the growers. And I think that if
10 you said that only a certain amount of the existing
11 growers would get base allotment, I wouldn't consider
12 that to be fair and equitable.

13 ***

14 MR. OLSON: Thank you very much. I was just
15 trying to get something on the record on that issue.

16 ADMINISTRATIVE LAW JUDGE: Ms. Finn.

17 MS. FINN: Thank you. I just have a couple of
18 questions.

19 ***

20 BY MS. FINN:

21 Q. On the hardship committee, do you think
22 it is important that other growers, when they bring
23 their case to the hardship committee, that their
24 competitors shouldn't be allowed to listen to that
25 information?

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1 A. Could you give me an example, like their
2 competitors -- do you mean...

3 Q. Committee members would be their fellow
4 growers.

5 A. Well, the way it is set up, the full
6 committee would appoint an executive subcommittee to
7 hear, to act as the hardship committee. Those growers
8 would obtain the information from the individual
9 applying and it would be their job to make a decision
10 based on what is supplied. And if they felt
11 uncomfortable, they could, in fact, bring it back to the
12 whole committee. Now, I think your question is have
13 somebody else besides committee members hear the
14 hardship cases?

15 Q. Perhaps like committee staff or a public
16 member?

17 A. Well, that subcommittee may, in fact,
18 include that public member, because it is a
19 subcommittee, executive subcommittee, of the whole
20 committee. The problem is if you get somebody trying to
21 make a decision that doesn't understand the complexities
22 of the industry and what would be considered an act of
23 God, and just how much of an act of God it was, I think
24 you could have a real problem of getting a true decision
25 made based on real facts.

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1 Q. Could perhaps the committee staff or the
2 public member like black out names or -- and then
3 present it to a subcommittee?

4 A. I think that could be done. It depends
5 on how the committee would actually set that up, but I
6 think if the information could be given in a fashion
7 where it would give the picture of what has happened,
8 there was supporting documents -- like, for example, if
9 the grower had a hale storm and was able to provide the
10 insurance information or other information that would
11 verify that these things happened, and could lay out a
12 paper trail without putting forth the actual name of the
13 individual or entity, I think that would be preferred,
14 because we are not looking at -- we are trying not --
15 and I think I see what you are trying to get to, is we
16 don't want it to be a personality thing where I don't
17 like you so I don't give a damn what happened to you,
18 you ain't getting anything. And I think if it could be
19 done that way, it surely would, and I would envision
20 that the committee would take every precaution so that
21 that wouldn't happen.

22 Q. Thank you. Under the additional
23 allotment base, the one percent that would be
24 released...

25 A. Yes.

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1 Q. The wording is "The committee shall make
2 additional allotment bases available in the amount of no
3 more than one percent."

4 A. Yes.

5 Q. Does that mean that the committee could
6 decide to distribute less than one percent?

7 A. Yes.

8 Q. Could less than one percent be zero?

9 A. Yes. I think one percent -- or zero is
10 less than one percent.

11 Q. So what would trigger the decision making
12 in how you would decide what percent would be released
13 or made available?

14 A. Well, I think the idea behind this was
15 just to not absolutely tie the committee's hands to have
16 to do something no matter what. And I think that part
17 of that came from discussion with the mint people, where
18 they automatically allow so much allotment every year,
19 whether the salable increases or decreases. I think we
20 heard some testimony that the salable in the mint
21 industry in some cases has gone down. Well, if you keep
22 adding, and adding, and adding allotment, you are going
23 to have that effect. The idea was to allow the
24 committee to assess the market situation, what was
25 happening, and to be able to have that flexibility. If

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1 the industry deemed that it was not worthwhile to do so,
2 there would be that flexibility.

3 Q. So is it conceivable that no new growers
4 could ever get base?

5 A. It is conceivable, but I would venture to
6 say very unlikely, given the feeling of the Department
7 of Ag about new entry. I might add that in years of no
8 increase or stagnant was not -- didn't come specifically
9 from us. It was a discussion early on with some people
10 in the Department about how would that fly, the years of
11 no increase or staying the same, and it was thought that
12 it was a pretty good idea.

13 Q. By someone in the Department?

14 A. Yes.

15 ***

16 MR. MONAHAN: I think Mr. Gasseling is getting
17 tired.

18 ***

19 BY MS. FINN:

20 Q. I will just move to my last question. It
21 is on the reserve pool. You have two criteria for
22 disposition of the reserve pool. Were other
23 alternatives considered -- I mean, such things as
24 secondary outlets for hops, or experimental purposes, or
25 noncompetitive, noncommercial outlets that might be

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1 considered useful for a reserve pool?

2 A. Basically, not. It is pretty much -- you
3 know, there is a small, small -- you know, I think has
4 been testified, pharmaceutical, but virtually, all of it
5 is hops. And there is -- you know, you have to
6 understand that in that given year, you can under the
7 excess rule for that crop year take product out and
8 supply out of the pool under the excess for a given
9 year. So you do have, in fact, a third way, but it is
10 limited when it can be done.

11 ***

12 MS. FINN: Thank you. That is all I have.

13 ADMINISTRATIVE LAW JUDGE: Thank you, Ms.

14 Finn. Mr. Olson. Mr. Gasseling chuckles.

15 ***

16 BY MR. OLSON:

17 Q. I was trying to remember if it was you,
18 Mr. Gasseling, that testified on behalf of the idea of
19 adding authority within the order for the committee to
20 establish regulations for types of shipments that would
21 be exempt from assessment, or volume, or additional
22 regulations issued under the program. Was that you?
23 Let me rephrase it -- would you support such a position
24 within the proposed marketing order?

25 A. For what, again?

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1 Q. Authority for the committee to establish
2 those types of shipments that would be exempt from the
3 volume control provisions and assessment provisions of
4 the order and/or...

5 A. When you say shipments, I want to make
6 sure I understand it, because I have kind of gone brain
7 dead right now so...

8 Q. Well, you are bringing me along with you.
9 The authority -- another way of saying it might be that
10 the committee have authority with approval of the
11 Secretary to establish outlets -- charity isn't one that
12 comes to mind with hops, but it is one that is quite
13 common in other programs, research and development...

14 A. I think that would be very acceptable and
15 I would think it would be a good thing to add.

16 ***

17 MR. OLSON: Thank you, Mr. Gasseling. I am
18 sorry, but I am passing you onto my colleague to my
19 left.

20 ADMINISTRATIVE LAW JUDGE: Mr. Broadbent.

21 ***

22 BY MR. BROADBENT:

23 Q. In watching your demeanor change over the
24 last few minutes, I struck quite a few of my questions.
25 So we will get right to the important ones. You have

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1 had a long day. In 991.58(b), after the provided -- it
2 says, "provided that the allotment base obtained by
3 transfer from another producer or issued pursuant to
4 991.53(e) shall not be transferred for at least two
5 years following the transfer or issuance, and that the
6 person receiving the allotment base submit to the
7 committee evidence of" -- okay. If you were to change
8 that reference to 991.53(e) just to 991.53, that would
9 potentially limit the transfers of base after the
10 initial base allotments have been issued and might that
11 take care of some of the problem with Mr. Olson's
12 earlier comments concerning the issuing of double base,
13 where in the 1997 through 2001 period, if a farm had
14 been sold or transferred, and you would have production
15 under two people's names for the same production, would
16 that be a way, potentially, to keep from allocating more
17 base than should be?

18 A. Well, I might be not understanding this,
19 but I look at the transfer sections, once the base
20 allotment is allocated. We are talking about how a
21 producer may transfer that base that they have been
22 allocated to another producer. And 991.53 in total
23 talks about, in some parts of it, about how you actually
24 set up the initial base.

25 Q. Yes. Maybe I am not being as clear as

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1 what it is in my head, but initial base is allocated to
2 entities that have grown -- and Mr. Olson had an example
3 whereby the same production -- same farm might actually
4 have additional base allocated initially if there was a
5 transfer of ownership within the representative period,
6 and so base might be allocated to the -- I think the
7 example was a father/son, where the son buys the
8 production, or buys the farm from the father, and if he
9 did it at the right time, so that when the father would
10 produce in 2001, and the son would produce from the same
11 farm in 2002, that there is a possibility that base
12 could be allocated for the same farm twice.

13 A. Yes.

14 Q. If there was -- if you changed the
15 transfer section to include -- to, essentially, make a
16 moratorium on transfers for two years after any base had
17 either been allocated -- either new base or initial
18 base, and then the bona fide effort requirement would
19 kick in, wouldn't that potentially be a way which that
20 base allocation wouldn't exist for both parties?

21 A. Well, I think that if I understand your
22 question properly, or correctly, and we have a
23 situation -- we have a producer in 2001 that produced
24 hops in 2001, in 2002 a different producer is
25 producing -- that acreage was sold, so we have a

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1 different producer -- we have that situation in Idaho.
2 We had a producer in 2001. He sold his farm operation
3 and there is a new producer in 2002. There is no --
4 that has, in my mind anyway, has nothing to do with
5 transfer of base. It has to do with initial issuance of
6 base. We have two owners, two different owners. They
7 are two totally separate as -- you know, so then the
8 committee would have to address that issuance to the
9 producer who was a producer in 2001, but isn't producing
10 anymore. I would envision that the committee has enough
11 flexibility there through certain bona fide effort
12 requirements that -- and other flexibilities with the
13 committee, that they could address that allotment that
14 was to that producer that is not a producer anymore.
15 But given the way it is set up, it has nothing to do
16 with transfer, so a moratorium on transfers wouldn't
17 take care of that situation anyway.

18 Q. Okay. Maybe it is later than I think it
19 is. We will move on. I might have just confused
20 myself. Excuse me. Then we will move on to, hopefully,
21 another good question. In 991.53(1) it says the actual
22 production in number of pounds, and then down below it
23 says you are going to report the rate of hops that was
24 sold during that year.

25 A. Where are we at? Excuse me, again,
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1 Barry. Which one are we on again?

2 Q. 991.53.

3 A. Okay.

4 Q. Okay. In issuing initial allotment, it
5 is going to be based on production but yet, there is the
6 word "sold" there. Is there going to be any problem in
7 trying to allocate initial base by people that have
8 production that hasn't been sold that will have a hard
9 time accounting for?

10 A. It is 991.53(b)(1).

11 Q. Excuse me.

12 A. Well, that is a good point, because the
13 idea was that in those past years, all of that
14 production would be sold, but there could be a situation
15 where a grower was still had part of that in inventory.

16 Q. You mean, I actually had a good question?

17 A. You had a good questions.

18 Q. After that other one, I was worried. I
19 am not sure that we will be able to resolve that. I
20 just wanted to -- maybe if it is important enough, you
21 might reconsider that for resubmission tomorrow or
22 something. Let me see. It mentions appropriate state
23 certification documents. That has already been
24 mentioned once. I just want to make sure that all
25 states that have production have state certification

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1 programs.

2 A. To my knowledge, yes, they to.

3 Q. And the certificates in all those states
4 would have all the information that needs to be -- as
5 far as you know, it is all complete information that
6 would verify the production records from any of the
7 growers in those states?

8 A. Well, what you have in each state is
9 official documentation as to the grower number, variety,
10 leaf and stem, the part of the weights and the brewing
11 values; in some cases, brewing values are through the
12 State; other cases they are done by the dealers. But
13 the weights and stuff are done by the people who take
14 them in, that do the weighing at the time of taking.
15 Now, there are some growers who do their own weighing
16 right at the farm, but usually, the official weights are
17 the taking weights by the handlers or whoever is going
18 to store them.

19 ***

20 ADMINISTRATIVE LAW JUDGE: Let us change the
21 tape and take a ten-minute break. Please be back at
22 7:07.

23 ***

24 [Off the record]

25 [On the record]

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1

2

ADMINISTRATIVE LAW JUDGE: We are back on

3

record at 7:09. Let me see -- who is asking questions?

4

Mr. Broadbent.

5

6

BY MR. BROADBENT:

7

Q. I had a whole bunch, but I subjected them

8

to the it is after 7:00 litmus test, and I have come

9

back with -- I only need to ask one. But I do want to

10

know what you think about how you would deal with any

11

disputes that arose in the initial allotment base

12

allocation process that wouldn't fall under the hardship

13

committee. How will any of the other disputes be

14

resolved?

15

A. Could you give me an example that might

16

be...

17

Q. Somebody knows that they have production,

18

but they can't verify it. Somebody has production that

19

didn't get sold, and they don't know when it got sold,

20

but they know they have some, and they put an arbitrary

21

number on it. And I can't imagine that you would be

22

able to go through and allocate all this base without

23

having somebody have some issue with the way that it was

24

handled. But if you are confident that your industry is

25

able to handle all those, I will take that as an answer.

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1 A. Well, I think that you would envision a
2 subcommittee that then could go to the full committee.
3 And ultimately, I think if -- and I can't remember. I
4 thought I saw something in there that it could
5 ultimately be decided by the Secretary. There was
6 something there that I thought somewhere -- not in that
7 section, but I saw that, ultimately, it could go the
8 Secretary. But I would think that those disputes would
9 ultimately be resolved in the beginning by the
10 Committee.

11 ***

12 MR. BROADBENT: Okay. I was thinking that
13 maybe if you expanded the scope of the executive -- the
14 hardship committee to include that -- I am done.

15 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.
16 Broadbent. Other questions from the USDA
17 representatives? All right. Now, we have covered quite
18 a bit of information in this last batch of questioning.
19 I don't know whether we are ready to go into additional
20 provisions at this time or go back, perhaps, to the
21 definition of handle that Mr. Christiansen was working
22 on?

23 MR. MONAHAN: Your Honor, I have -- I think I
24 have three announcements I can make.

25 ADMINISTRATIVE LAW JUDGE: All right. Thank
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1 you, Mr. Monahan.

2 MR. MONAHAN: First, I understand Pudge
3 Rodriguez just hit a homerun and the Yankees are down 6
4 to 1. Second, with respect to the administrative
5 provisions, we are now at the point where the Proponents
6 Committee has put on testimony in support of every
7 single provision in the proposed order. Okay. Dan
8 Neuhaus had testified in favor of the administrative
9 provisions. He was not recalled for cross examination
10 when we ran out of time back in Portland. I have spoken
11 to Mr. Moody, who is not here to defend himself at the
12 moment. He indicated that at least he, on behalf of
13 Opponents, had no further questions for the Proponents
14 witness with respect to administrative committee
15 provisions. If there are any questions from the
16 Department, certainly, we could entertain those. I know
17 it is unfair to say this after 7:00. We would accept
18 guidance from the USDA as to whether we should readdress
19 the administrative provisions or just open Mr. Gasseling
20 to questions about those provisions.

21 ADMINISTRATIVE LAW JUDGE: Ms. Deskins.

22 MS. DESKINS: We have reviewed our list. We
23 don't have anymore questions on that, but just
24 procedurally, if anybody has anymore cross, they should
25 be given an opportunity, because we did say we would

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1 come back to it. I don't know if you need to do it
2 tonight or in the morning, but just procedurally so
3 people have an opportunity.

4 MR. MONAHAN: Procedurally, and Mr. Moody can
5 make a statement for the record, if you like, or Mr.
6 Carswell, as well, I understand that the Opponents have
7 exhausted any questions they would have on the operation
8 of the administrative committee.

9 ADMINISTRATIVE LAW JUDGE: Mr. Carswell.

10 MR. CARSWELL: Does this include the reports
11 and records provision, Brendan?

12 MR. MONAHAN: Reports and records are actually
13 handled by Rod Christiansen, and he was subject to cross
14 examination.

15 MR. CARSWELL: I must have missed it. I am
16 sorry. Could I ask one general question about those
17 provisions?

18 MR. MONAHAN: I have no objection to sort of
19 having a catchall for our resident expert, Mr.
20 Gasseling. And if there are some questions, just to
21 wrap up the presentation of the substantive and
22 procedural provisions, that probably makes sense.

23 ADMINISTRATIVE LAW JUDGE: The definition of
24 handle is something that I don't know whether you have
25 got ready now in a final version, and if you do, I

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1 should do something with the exhibit, its predecessor.
2 I don't know whether you will have hard copy in the
3 morning.

4 MR. MONAHAN: Your Honor, why don't -- for
5 procedural purposes, why don't we withdraw the hard copy
6 exhibit that was submitted this morning, as there has
7 already been a substantive change, at least for
8 illustrated purposes, and we would submit first thing
9 tomorrow morning the new and improved and updated
10 definition of handle, which would include not only the
11 illustrative example we gave, but also, the
12 recommendations that we have received from both
13 Opponents and USDA during the course of today's Hearing?

14 ADMINISTRATIVE LAW JUDGE: If you are going to
15 try to do that tonight, then we really need to wrap this
16 up fairly soon or you just won't have the energy to do
17 it tonight, I would think.

18 MR. MONAHAN: I agree, Your Honor.

19 ADMINISTRATIVE LAW JUDGE: Okay. Now, is
20 there any objection to the withdrawal of Exhibit #43?
21 There is none. Exhibit #43 is withdrawn.

22 MR. MONAHAN: While we are at it, Your Honor,
23 we had submitted as identification, Exhibits 11 through
24 15. None of those have been admitted. Because we have
25 shuffled witnesses in terms of offering testimony and

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1 support of the various provisions, those exhibits now
2 probably should not be before -- should not be on the
3 record. Many of them were prepared by persons who did
4 not testify in support, and we would accordingly
5 withdraw Exhibits 11 through 15.

6 ADMINISTRATIVE LAW JUDGE: Is there any
7 objection to the withdrawal of Exhibits 11 through 15?
8 There is none. Exhibits 11 through 15 are hereby
9 withdrawn. All right. I would now invite any wrap-up
10 questions of any nature for Mr. Gasseling. This will be
11 our last opportunity to question him, perhaps, so if you
12 have any question about anything for Mr. Gasseling, you
13 may ask it now. Mr. Carswell.

14 ***

15 BY MR. CARSWELL:

16 Q. Tom, I am looking at the reports and
17 records section. It is 991.60 through 63, and it talks
18 about the treatment of handler records. And I am
19 wondering if, in the course of all the work the
20 committee is going to be doing -- I believe they are
21 going to have other records perhaps; records, for
22 example, from growers that aren't handlers at any given,
23 you know, point, for example. And I am wondering if
24 there is a provision for keeping those records
25 confidential. I am just not sure how that is going to

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1 operate in terms of what information the committee is
2 going to have and how it is going to be treated under
3 these provisions.

4 A. Well, I think it pretty much spells it
5 out in 991.63, the confidential information, how it
6 operates under -- and I would surmise that it would
7 operate the same way under the hop order as it does the
8 mint order. Either the employees or the third party
9 administrator is responsible for all of that
10 information, gathering that information, compiling the
11 data, reports, and so forth, and all of that is handled
12 by those people, and the committee members themselves
13 did not have access to any of that confidential
14 information. And it says the last three sentences -- I
15 will start where it says records -- "Records shall at
16 all times be kept in the custody and under the control
17 of one or more employees of the committee, who shall
18 disclose such information to no person other than the
19 Secretary." So all of that -- and above, it talks about
20 confidential information, proprietary information, that
21 type of thing. So the committee members would not have
22 access to any of that information except in the total.

23 Q. Yes. That provision, though, and the
24 language you quoted, is all qualified by the reports and
25 records being furnished by handlers. So I am just

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1 wondering if there is other information gained -- for
2 example, under 991.62, it talks about the Secretary of
3 the committee can have access to any premises where
4 applicable records are maintained, where hops and/or hop
5 products are received or held, and for example, I guess
6 a brewery might fit that definition as far as where hops
7 are received or held. And so it would seem like maybe
8 records could be obtained from parties other than
9 handlers, and I am just not sure if 991.63 and the
10 confidentiality provisions there would apply to records
11 obtained from somebody other than a handler. And I was
12 wondering if you might read that the same way or if I am
13 wrong.

14 A. Well, let me -- could I read it for a
15 second and then I will...

16 Q. Please.

17 A. Well, if I read it, and if it is not
18 clear enough, I think I would -- I think the committee
19 would have no problem clarifying it. But it says
20 "and/or hops products are received or held, and at any
21 time during reasonable business hours, shall be
22 permitted to inspect such handler premises. I interpret
23 that to be handlers, and breweries, as we determined, I
24 think, are not handlers.

25 Q. That is a fair enough point on 991.62. I

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1 guess the general question is, is the committee going to
2 have information in the course of its work from parties,
3 entities, that would include growers, might include
4 brewers, any entity other than a handler, and if so, do
5 these provisions protect the confidentiality;
6 particularly, 991.63, protect the confidentiality of
7 that information? If there is information other than
8 information that is obtained from handlers, then it
9 would seem like it is not -- that information wouldn't
10 be covered under 991.63.

11 A. So what you are asking -- or you are
12 indicating that maybe there should be some language in
13 there that the confidentiality would cover the other
14 areas besides handlers?

15 Q. Yes, sir, and I would also just ask is
16 there going to be other information collected during the
17 course of the committee's work that is confidential or
18 proprietary information that won't be gathered from
19 handlers?

20 A. Well, I think that I would envision that
21 there will be information gathered from growers on
22 production, acreage, those types of things. But again,
23 I think the key is that this information would be
24 gathered by either the employees -- and this is how it
25 worked in the old marketing order, how it works in the

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1 mint marketing order -- or a third party administrator.
2 And that is the barrier between the committee getting
3 confidential information of any sort from any source and
4 divulging who, what, when, where to the committee
5 itself. The committee gets information in total.

6 Q. Then I would posit that 991.63 doesn't
7 cover anybody other than handlers, and I would recommend
8 modifying that to either any entity or some other way to
9 fix that problem, because it seems to be a problem to
10 me. I think right now it is limited to just handlers.

11 A. I have no problem with that. That is a
12 good point.

13 ***

14 MR. CARSWELL: That is all I have. Thanks.

15 ADMINISTRATIVE LAW JUDGE: Additional
16 questions for Mr. Gasseling? Dr. Tweeten, did you
17 indicate that you had a question? It is as quiet as a
18 mouse. There are no other questions, Mr. Gasseling.

19 MR. GASSELING: Sounds great to me.

20 ADMINISTRATIVE LAW JUDGE: You may step down.

21 MR. GASSELING: Thank you very much.

22 ADMINISTRATIVE LAW JUDGE: Thank you so much.

23 Mr. Annen, would you come forward, please? Mr. Annen,
24 it is 7:26, and I thank you so much. I know you have
25 been here all day and I appreciate very much your making

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1 yourself available. Please state and spell your name
2 for us.

3 MR. ANNEN: John, J-o-h-n, Annen, A-n-n-e-n.

4 ADMINISTRATIVE LAW JUDGE: And because I like
5 your middle name, will you tell us that and spell it for
6 us?

7 MR. ANNEN: Flavius, F-l-a-v-i-u-s.

8 ADMINISTRATIVE LAW JUDGE: Thank you. You
9 remain sworn.

10 ***

11 JOHN F. ANNEN,
12 having previously been duly sworn, according to the law,
13 testified as follows:

14 BY ADMINISTRATIVE LAW JUDGE:

15 Q. Would you begin by identifying the
16 exhibits that you have copies of -- I have the record
17 copies in front of me.

18 A. Exhibit #48 is a letter that I wrote to
19 the Department when they first asked for comments. #24,
20 everybody has had for almost a week now; it was made
21 available in Portland. Exhibit #50 is a letter that Ms.
22 Michelle Palacios, M-i-c-h-e-l-l-e, L. P-a-l-a-c-i-o-s.
23 She is administrator of the Oregon Hop Commission, and
24 she sent me -- because there were questions in Portland
25 about the number of growers, and how do you get a grower

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1 number, and all that in Portland, I had her send this to
2 me with the number of Oregon hop growers and the number
3 of active grower numbers. Exhibit #51 is a letter that
4 was sent on behalf of the Oregon Hop Growers Association
5 to the USDA, requesting an extension on the hearing when
6 we found out it was going to be on the 15th of August.
7 Exhibit #49 is a letter that I sent to Mr. Robert
8 Keeney, Deputy Administrator, on my thoughts about the
9 proposed marketing order. That is it.

10 Q. All right. I am going to ask if anyone
11 has any objection to these being admitted into evidence.
12 If you would like to ask questions of the witness about
13 these before you decide, or if you need more time to
14 read them, let me know. The first is Exhibit #48, and I
15 would ask you, Mr. Annen, to tell us whether the October
16 23, 2003 date, which is today, is reflective of when you
17 submitted that letter?

18 A. No, Your Honor, it isn't. The
19 computer -- I am not that computer literate, and it
20 changed the date when I had it printed.

21 Q. All right. And to whom did you send the
22 letter when you originally wrote it?

23 A. To the address that was available on the
24 internet for the first round of comments on the proposed
25 marketing order.

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1 Q. All right. In what year would that have
2 been that you would have submitted the letter?

3 A. 2003.

4 Q. All right. Thank you. Is there any
5 objection to the admission into evidence of Exhibit #48?
6 There is none. Exhibit #48 is hereby admitted into
7 evidence. Exhibit #49 -- is there any objection to the
8 admission into evidence of Exhibit #49? There is none.
9 Exhibit #49 is hereby admitted into evidence. Is there
10 any objection to the admission into evidence of Exhibit
11 #50? There is none. Exhibit #50 is hereby admitted
12 into evidence. Is there any objection to the admission
13 into evidence of Exhibit #51? There is none. Exhibit
14 #51 is hereby admitted into evidence. With regard to
15 Exhibit #24, which is already in evidence -- not
16 everyone has a copy, but many of you do. Are you
17 available, Mr. Annen, now for questions from anyone
18 about any of these exhibits?

19 A. Yes, Your Honor.

20 ***

21 ADMINISTRATIVE LAW JUDGE: All right. I would
22 invite questions for Mr. Annen on any of these
23 positions.

24 MR. ANNEN: Your Honor, may I add...

25 ***

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1 BY ADMINISTRATIVE LAW JUDGE:

2 Q. You may.

3 A. On Exhibit #24, these are the thoughts
4 that I had on the hop marketing order and you can see on
5 the date on the top, this was January 2, 2003. These
6 are the thoughts I had on the proposed outline that was
7 available at that time, and in the course of these
8 hearings, some of this might not be applicable anymore
9 because the proposal as submitted has changed quite a
10 bit -- it has been a bit fluid the last few days, so
11 some of it may not apply anymore. Thank you.

12 Q. Mr. Annen, you were the author of
13 Proposal #10. Actually, we have identified that that is
14 Proposal #11 contained in the Federal Register Notice
15 dated September 8, 2003. Is that correct?

16 A. Yes, Your Honor.

17 Q. And are you still in support of that
18 proposal?

19 A. Yes, Your Honor.

20 ***

21 ADMINISTRATIVE LAW JUDGE: All right. Any
22 other questions for Mr. Annen -- any questions? Ms.
23 Finn.

24 ***

25 BY MS. FINN:

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1 Q. I just have a couple on your proposal.
2 You suggest deleting Sections 991.50 through 58, which
3 is, in effect, all of the volume control provisions. Is
4 that correct?

5 A. Yes, ma'am.

6 Q. And the order would be limited to an
7 information gathering, data collection type of order.
8 Is that correct?

9 A. Yes, ma'am.

10 Q. What type of information do you think
11 that a hop committee could collect?

12 A. I would like to see all the acreage
13 numbers, inventory numbers, the head numbers, all the
14 numbers that we need as hop farmers to make informed
15 decisions on what we are going to grow and sell in the
16 future.

17 Q. Now, this week we have seen that there is
18 a lot of information that can be disseminated from
19 different sources. Would this further enhance that
20 information?

21 A. Yes, because I believe if it is
22 mandatory, then you have got real hard numbers. There
23 has been some questions about the numbers that are out
24 there today, and then there is reporting, and there is
25 misreporting, and not reporting. This way, everybody

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1 would have to be -- the playing field would be level,
2 everybody would have to submit their numbers.

3 Q. Would you want procedures established to
4 disseminate this information so that growers and
5 handlers and...

6 A. Yes, ma'am.

7 Q. ...could have access to this information?

8 A. Yes.

9 Q. Are you in support of leading the
10 authority for research and development in the order?

11 A. Yes, ma'am.

12 Q. Do you have any issues with the way the
13 committee structure is set up -- do you want to leave
14 that the same?

15 A. That would be fine for statistical on the
16 order.

17 Q. I think that is all I have. Thank you.

18 A. Thank you.

19 ***

20 ADMINISTRATIVE LAW JUDGE: Thank you, Ms.
21 Finn. Additional questions for Mr. Annen? Mr. Monahan
22 -- shall I start with Mr. Carswell?

23 MR. MONAHAN: I think the Opponents
24 anticipating direct exam, and I would be happy to cross
25 at the conclusion.

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1 ADMINISTRATIVE LAW JUDGE: All right. Mr.
2 Carswell.

3 ***

4 BY MR. CARSWELL:

5 Q. John, I was just wondering -- while,
6 certainly, there would be opposition to exclusion of the
7 production controls, are you aware of any significant
8 opposition to a marketing order that would include the
9 R&D and information collecting provisions?

10 A. No, sir.

11 Q. What is your feeling about the -- you
12 know, I know you are opposed to the order, but with
13 respect to the provision where you can adjust the base
14 allotments every five years, what is your thinking about
15 that provision?

16 A. That is a very dangerous one. I think
17 that the base -- given the way that the base were to be
18 allocated, it will be artificially high. When that
19 needs to be reviewed in five years, I would think the
20 committee would be prudent to -- if it has been -- the
21 salable is set at 60 percent or less, would wonder why
22 do we have all this base and readjust at that time. If
23 I were on the committee, that is what I would do.

24 Q. That is all I have. Thank you.

25 A. Thank you.

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ADMINISTRATIVE LAW JUDGE: Mr. Monahan.

MR. MONAHAN: Thank you, Your Honor.

BY MR. MONAHAN:

Q. I feel compelled to ask some questions. If I don't, Mr. Annen may make me pay his gas money for coming up here. Thanks for coming up, Mr. Annen. Take a look, if you would, at Exhibit #24.

A. Yes, sir.

Q. And I know you have been paying attention during these proceedings, and I am not going to ask you to agree with me as to whether the proposed order as explained addresses some of your concerns. I just want to address a couple of points you make.

A. Yes, sir.

Q. Section 991.04, you make the point that aroma hops are not the problem. Is that right?

A. Yes, sir.

Q. And I don't remember if you told us -- what percentage of your production is aroma hops?

A. Almost all of it.

Q. Do you grow cascades?

A. No, sir, we do not.

Q. Do you know if cascades are in balance?

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1 A. No, sir, I don't do that market and we
2 don't grow those hops, so I don't follow that market.

3 Q. So your aromas are in balance, but you
4 don't know about the others?

5 A. My aromas are in balance.

6 Q. Would you support a marketing order that
7 only -- that excluded aroma hops?

8 A. I would have to see the whole thing, you
9 know, how it is excluded and...

10 Q. Have you heard the testimony as to why
11 aroma hops were included?

12 A. Yes, sir.

13 Q. And that is that they didn't want to
14 exclude a current aroma grower like yourself from that
15 year getting base in alpha?

16 A. Yes, sir.

17 Q. Does that seem equitable to you?

18 A. Yeah.

19 Q. 991.25, you express some concerns about
20 the proposed voting structure?

21 A. Yes, sir, I do.

22 Q. I know you oppose the marketing order,
23 but if the marketing order were supported by 66 percent
24 of those who voted in the referendum, how would you
25 structure the committee in the most fair way possible to

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1 best represent the interests of the industry?

2 A. Well, I would go through by acreage and
3 by variety, and that is where I would start. And then I
4 would make sure that there is nothing -- my concern is
5 in Washington and Idaho -- I will read it right out of
6 here. "Washington and Idaho, with similar climate and
7 variety production, could pass policy that may adversely
8 affect production in Oregon, a large aroma growing
9 region."

10 Q. Because of the six-person vote necessary
11 to carry procedures, is it also your understanding that
12 Oregon and Idaho could block efforts by Washington to
13 steamroll the process?

14 A. It could happen.

15 Q. That makes sense and that is equitable.
16 Is it not?

17 A. You can't give -- there is no guarantee
18 so...

19 Q. Would you agree that the way the
20 committee is structured in terms of representation, at
21 least in ratios of percentages, follows about the way
22 the acreage exists in the northwest?

23 A. Yes, sir.

24 Q. 991.52, sir, I just want to make sure --
25 do you think you better understand the alpha acid factor

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1 now after listening to the testimony?

2 A. Yes, sir.

3 Q. And that because the alpha acid factor is
4 set at ten, the burdens of this marketing order, to the
5 extent there are any, are shouldered more heavily by the
6 alpha growers?

7 A. Yes, sir.

8 Q. Do you agree that is equitable in light
9 of who the -- or what the perceived cause of the problem
10 is?

11 A. Yes.

12 Q. I want to jump ahead to Exhibit #49, and
13 I ask this question -- I want to make sure if I know
14 what you are talking about. In the third paragraph, you
15 make the statement, "Isn't it ironic that some of the
16 farms and families that were opposed to the last
17 marketing order and sued the USDA to regain their
18 independence are some of the same people trying to
19 instigate this order?" Can you tell me who those
20 families are?

21 A. I would rather not.

22 Q. Well, I wasn't here -- were you at the
23 1984 proceedings?

24 A. No, sir. That was -- I penned that after
25 consultation, chatting with some of the growers from up

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1 here, and it was my understanding when I wrote this that
2 that was true.

3 Q. Okay. You might have been misinformed?

4 A. I could very well have been, but I had no
5 reason to believe they would lie to me.

6 Q. I will -- I know I am not under oath, but
7 I will suggest to you that in a French farming
8 community, you may find certain names that aren't
9 necessarily the same family. You might have heard a
10 name that was the same name as the name you saw on the
11 committee.

12 A. Okay.

13 ***

14 MR. MONAHAN: Your Honor, that is all I have.
15 I appreciate you coming up, Mr. Annen.

16 MR. ANNEN: Thank you.

17 ADMINISTRATIVE LAW JUDGE: I do, too, Mr.
18 Annen. I appreciate all this information. All right.
19 Other questions? Mr. Carswell.

20 MR. CARSWELL: I apologize, Your Honor. I
21 forgot to ask John about something -- my apologies.

22 ***

23 BY MR. CARSWELL:

24 Q. John, have you -- are you aware of an
25 increase in direct relationships outside of the Coors

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1 and Anheuser Busch direct relationships with growers?

2 A. Yes, sir.

3 Q. Could you describe some of those that you
4 are familiar with?

5 A. When...

6 Q. If it is not proprietary.

7 A. No, it is not proprietary. This summer,
8 I was fortunate to go onto a trip to Europe to visit the
9 breweries through HGA, and one of the breweries that we
10 chatted with, the representative told us that he was
11 actively seeking groups of growers to supply them with
12 alpha.

13 Q. Are you aware of any major brewery,
14 brewers, international brewers, who perhaps even on a
15 small scale, but in an increasing manner, are entering
16 into direct relationships with growers?

17 A. Yes.

18 Q. Could you describe some of those if it is
19 not proprietary?

20 A. Yes. They wish -- the brewery that we
21 had contact with indicated to us that they wish to do
22 this with growers, but that it needed to be in fairly
23 large quantities, 10,000 kilos, because they didn't want
24 to deal with -- they didn't care to deal with one grower
25 at a time because there is too much paperwork, but if

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1 you could find -- I believe the term that the gentleman
2 used was "basket of growers", that they would be more
3 than happy to entertain buying hops direct.

4 Q. And in that scenario, dealers would
5 perform some service function perhaps?

6 A. Yes, sir. They would process and ship
7 the hops.

8 Q. But the contract would be direct with the
9 brewer?

10 A. Between -- the information, as I
11 understood it at the meeting, is that the brewer would
12 be in direct relation with the grower, and that the
13 dealer/handler would do the processing and shipping.

14 Q. I get the sense when you say brewer so
15 many times, that it wouldn't be proprietary -- you don't
16 want to disclose the name of this brewer. Is that
17 accurate?

18 A. Yeah, that is accurate.

19 ***

20 MR. CARSWELL: Thank you, sir.

21 ADMINISTRATIVE LAW JUDGE: Are there any other
22 questions for Mr. Annen from anyone? Ms. Deskins.

23 ***

24 BY MS. DESKINS:

25 Q. Mr. Annen, thank you for waiting
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1 patiently to finally testify. This is a short question,
2 but I don't think you said, you know, why you want to
3 delete all the volume control regulations, or maybe you
4 can explain to us why you want to do that?

5 A. Well, I think that volume control is a
6 government mandate that I, personally, don't need in my
7 life. I think that self control -- obviously, this
8 industry probably has none by the way it has been going,
9 but our ranch is in balance. If I choose to expand, am
10 I going to have to buy base? I think that is un-
11 American.

12 Q. Thank you.

13 A. Thank you.

14 ***

15 ADMINISTRATIVE LAW JUDGE: Are there any other
16 questions for Mr. Annen? All right. Mr. Annen, is
17 there anything else you would like to add -- oh, we have
18 a question from Mr. Roy. Mr. Roy.

19 UNKNOWN: Can the rest of us leave while Mr.
20 Roy asks this question?

21 ***

22 BY MR. ROY:

23 Q. Mr. Annen, in the State of Washington, if
24 you have a contract directly with a brewery, you are
25 considered to be a handler or a dealer. Do you know, to

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1 your knowledge, in Oregon, are Oregon Commission rules
2 the same thing?

3 A. Mr. Roy, I don't know what the commission
4 rules are directly, but I can tell you how it works. Is
5 that close enough?

6 Q. Well, I mean, is this more of a
7 designation?

8 A. Right. The way we do it now with our
9 relation -- at Annen Brothers we deal only directly with
10 Anheuser Busch. On our statement, our invoice or
11 whatever we send in to Anheuser Busch for payment, we
12 list all the varieties, all the lot numbers, all the
13 pounds, calculate the leaf and stem, and everything
14 else, and then you come up with a total. And then right
15 underneath the total there is a line that is less OHC
16 assessment, and so you just take your total pounds times
17 .014, and then they subtract that, so that money is
18 subtracted before you ever get your check, and we assume
19 that AB pays the Commission, because the commission
20 always comes up with the right number.

21 Q. Okay. But you don't know what the
22 designation is, like the State of Washington?

23 A. No. I can find out for you for tomorrow.

24 Q. Okay. Thanks.

25 A. Do you want to know for tomorrow?

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1 Q. Yes.

2 A. I will attempt -- I will give Michelle a
3 call tomorrow morning and see if she can answer that.

4 ***

5 MR. ROY: Thank you.

6 ADMINISTRATIVE LAW JUDGE: And is there any
7 dealer or handler in between you and Anheuser Busch in
8 that transaction?

9 MR. ANNEN: Yes, Your Honor, there is.

10 ADMINISTRATIVE LAW JUDGE: And is that who
11 provides the data to the Commission or do you know?

12 MR. ANNEN: The way -- we deliver our hops to
13 a dealer/handler, to a warehouse, and the bales are
14 sampled there, and the leaf and stem certificate, the
15 top copy is sent to AB, and we get the 200 copies sent
16 directly to us on the farm.

17 ADMINISTRATIVE LAW JUDGE: Thank you. Other
18 questions for Mr. Annen? All right. Mr. Moody, you
19 were right and I was wrong. His testimony was short and
20 I do appreciate it, Mr. Annen. You brought us a lot of
21 information very efficiently.

22 MR. MOODY: I think that just sometimes
23 happens late in the day, Your Honor.

24 MR. MONAHAN: Take credit for it.

25 ADMINISTRATIVE LAW JUDGE: All right. Thank

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1 you. You may step down, Mr. Annen.

2 MR. ANNEN: Thank you.

3 ADMINISTRATIVE LAW JUDGE: I am going to hand
4 the Court reporter these exhibits. And let us talk
5 about what we anticipate first thing in the morning. At
6 8:30, Mr. Monahan, what would you expect?

7 MR. MONAHAN: I would expect to present an
8 updated definition of handle, sort of a deja vu morning.
9 The Proponents case, in terms of substantively
10 addressing the procedures of the components of the
11 proposed order, is complete. There are seven growers in
12 favor of the proposed order who have expressed a desire
13 to present testimony tomorrow. Each of them has
14 indicated that they can be really as brief or as long as
15 Your Honor would like. I would anticipate most of them
16 to be in the Ron Brulotte type presentation, fairly
17 short, direct. We have, I think, greatly narrowed the
18 issues between the parties on the issue of referendum,
19 and I hope to have a little bit more information first
20 thing in the morning, but I believe that is going to be,
21 hopefully, a very short topic now. I think that we have
22 identified a very narrow subset of issues on which we
23 are not in absolute accord. I am hopeful that we can
24 make fairly close to a joint proposal to the USDA
25 tomorrow on how the referendum should be handled with

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1 respect to growers. That said, Your Honor, I think we
2 probably then, hopefully, can just hear from growers, a
3 number of growers in opposition as well who would like
4 to be heard, and we would just ask that after all the
5 growers in opposition have been heard, that we reserve
6 an hour to rebut some of the things that we have heard.

7 ADMINISTRATIVE LAW JUDGE: All right. Now,
8 were you also working on the definition of producer with
9 regard to the difficulty in identifying what one grower
10 is and separating that grower out from its other
11 entities, or its other family members, or the like?

12 MR. MONAHAN: In all candor, Your Honor, that
13 is something we have struggled with. We went back and
14 looked at the mint order. They have less information in
15 the order, but they employ the same practices that we
16 were trying to convey in this language. Perhaps that
17 has, in our attention to other issues, received shorter
18 shrift than the handle definition, but we would be happy
19 to ask Mr. Christiansen about that first thing in the
20 morning as well.

21 ADMINISTRATIVE LAW JUDGE: Thank you. All
22 right. Mr. Moody, does Mr. Monahan's plan for the
23 morning sound acceptable to you?

24 MR. MOODY: Yes, Your Honor.

25 ADMINISTRATIVE LAW JUDGE: All right. And Mr.

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1 Carswell?

2 MR. CARSWELL: Yes, Your Honor.

3 ADMINISTRATIVE LAW JUDGE: All right. Good.

4 I will see you all here at 8:30 in the morning. Thank
5 you. We are off record at 7:52.

6 ***

7 [End of proceeding]

1 CERTIFICATE OF REPORTER, TRANSCRIBER AND PROOFREADER

2
3
4 IN RE: HOPS PRODUCERS FOR WASHINGTON, OREGON,
5 IDAHO, AND CALIFORNIA
6

7 HELD AT: Yakima, Washington
8

9 DATE: October 23, 2003
10

11 We, the undersigned, do hereby certify that the
12 foregoing pages, numbered 1834 through 2172, inclusive,
13 are the true, accurate and complete transcript prepared
14 from the reporting by the reporter in attendance at the
15 above identified hearing, in accordance with applicable
16 provisions of the current USDA contract, and have
17 verified the accuracy of the transcript by (1) comparing
18 the typewritten transcript against the reporting or
19 recording accomplished at the hearings, and (2)
20 comparing the final proofed typewritten transcript
21 against the reporting or recording accomplished at the
22 hearing.
23

24 Date:



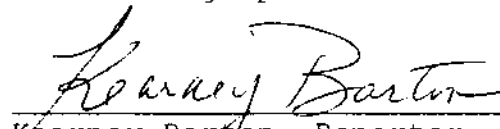
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